







THE  
FOCKET LAW-LEXICON.



THE  
**POCKET LAW-LEXICON**

EXPLAINING TECHNICAL WORDS, PHRASES, AND  
MAXIMS OF THE ENGLISH, SCOTCH,  
AND ROMAN LAW.

TO WHICH IS ADDED A COMPLETE LIST OF LAW  
REPORTS, WITH THEIR ABBREVIATIONS.

**THIRD EDITION.**

REVISED BY

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## PREFACE TO THE THIRD EDITION.

SINCE the issue of the last edition of this work in 1883 many important statutes have been passed, the effect of which is here briefly indicated, and a reference inserted in each case to the Act itself for the benefit of those who require more ample details.

We have added a considerable number of terms which the last ten years have brought into common use, and have expanded definitions in several instances where they seemed inadequate or obscure. In order to do so without exceeding the limits of a pocket lexicon, we have had to omit a certain number of Latin maxims and pleas in the old and long-disused forms of action. These will be found by the rare inquirer in the pages of Wharton's Law Lexicon.

HENRY G. RAWSON.  
JAMES F. REMNANT.

TEMPLE,

*February, 1893.*



## PREFACE TO THE SECOND EDITION.

IT has been my endeavour in this Lexicon to give, so far as is compatible with the limited space at my command, an adequate definition or explanation of all words and phrases used in English law, with the addition of a considerable selection of the most important terms in the laws of Scotland and Rome. An apology may be needed for the frequent use I have made of cross references ; but I was forced by considerations of bulk to adopt this alternative, or to omit much which it seemed desirable to insert. To the literal translations of the Latin maxims I have added illustrations in all cases where the application did not appear to be self-evident.

A full index of the abbreviations used for reference to the various law reports of the United Kingdom, with the periods over which they respectively extend, will be found at the end of the volume.

The corrections and additions made in this edition which are considerable as almost to constitute it a

new work, have been brought down to the present so as to include the Statutes of 1883, and the Rules of the Supreme Court just issued (referred to as R. S. C.).

I desire to express my obligation to Wharton's Law Lexicon, Bell's Digest of Scotch Law, and Sweet's Dictionary of English Law, to which I would refer the student for fuller information.

HENRY G. RAWSON.

23, OLD SQUARE, LINCOLN'S INN,  
*December, 1883.*

# THE OCKET LAW LEXICON.

## A.

**A**, in the Roman system of ballotvoting, stood for “*a*” and meant “I vote against the new proposition.”

**A and B lists.** See *Contributory*.

**A fortiori** [*by so much the stronger* (reason)], all the more.

**A mensa et thoro.** See *Divorce*.

**A posteriori, a priori.** See *Argument*.

**A prendre.** See *Profit*.

**A.R., anno regni**, the year of the reign.

*Actus rubis legis non est recedendum.*—(From the words of the law there must be no departure, i.e., Acts of Parliament must be strictly construed.)

**A vinculo matrimonii.** See *Divorce*.

**Ab antiquo**, from ancient (time).

*Ab assuetis non fit injuria.*—(From things to which we are accustomed no legal wrong can arise.) See *Acquiescence*.

**Ab initio**, from the beginning. See *Trespasser*.

**Abactor** (Rom. law), a cattle stealer.

**Abandonment**, in the law of marine insurance signifies relinquishment to the underwriters by a person insured of whatever may be saved of the subject of insurance. (2) Surrender by a debtor of his property for the benefit of his creditors. (See *Cessio*.) (3) Of a railway, cessation from working it; for which a company must obtain of leave from the Board of Trade. (4) The criminal offence of abandoning or exposing children under two years of age.

**Abandun**, or **Abandum**, anything abandoned.

**Abatement** (lit. : *a making less*), is used (1) of *Freehold*. See *Abator*; (2) of *Nuisances*, i.e., removal; (3) of *Debts* or *Ligacies*, i.e., reduction of the amount where there is not

sufficient to pay the whole; (4) of *Litigation*, i.e., the termination of an action by death of a party or change of interest, *pendente lite*. An action is no longer abated by the marriage, death, or bankruptcy of any of the parties if the cause of action survive or continue. See R. S. C. 1883, Ord. XVII.; (5) of *Pleas in abatement*. See *Dilatory*; (6) as equivalent to *Rebate* (*q. v.*) in commerce; and (7) of a *Badge* in coat-armour, also called *Rebatement*, indicating dishonour of some kind.

**Abator**, or **Abater**, one who abates a nuisance. (2) One who enters into a house or land vacant by the death of the former possessor, and not yet taken possession of by his heir or devisee. See *Disseisin*, *Intrusion*.

**Abatuda**, or **Abatude**, anything diminished. *Moneta abatuda* is money clipped and so diminished in value.

**Abavus** (Roman law), a great grandfather's father. See *Atavus*.

**Abbreviate** of *Adjudication* (Sc.), an abstract of the decree of adjudication, containing the names of the debtor and creditor, the lands adjudged, and the amount of the debt.

**Abbreviatio Placitorum**, an abstract of ancient pleadings prior to the year-books.

*Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis.*—(In abbreviations, the number and sense is to be so interpreted that the grant be not made void.)

**Abbriature**, a short draft.

**Abroach**, to monopolise goods or forestall a market.

**Abdicate**, to renounce the throne or government; (2) (Roman law), to disinherit.

**Abduction**, in the criminal law, is the forcible or fraudulent taking away of (i.) women or children; (ii.) voters. (2) It is also an offence against the civil law to abduct a man's wife or ward.

**Abearance**, carriage or behaviour.

**Abeched**, satisfied.

**Aberemurder**, deliberate murder, as distinguished from the less heinous crime of manslaughter or chance medley.

**Abet**, **Abettor**, one who being present or at hand incites another to commit a crime; he is a principal in the second degree. See *Principal*.

**Abeyance**. An estate or right is said to be in abeyance, or *in gremio legis* (in the bosom of the law), when there is on

person presently entitled to it. The fee simple in the glebe of a church is in perpetual abeyance.

**Abishering**, or **Abishersing**, quit of amercements. It originally signified a forfeiture. Where this word is used in a grant or charter, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any, within their fee.

**Abjudicate**, to give away or transfer by judgment.

**Abjuration**, a forswearing or renouncing by oath. Now obsolete. In the old law it signified (1) an oath taken by a person who had claimed sanctuary, to forsake the realm for ever; (2) an oath by which members of parliament and public officials were obliged to abjure or renounce the Pretender.

**Ablocation** (Roman law), a letting out to hire for money.

**Abortion**, a miscarriage, or the premature expulsion of the contents of the gravid uterus, before the term of gestation is completed. To procure abortion is a felony punishable by penal servitude for life. (See 24 & 25 Vict. c. 100, s. 58.)

**Abridgment**, a digest of the law. The principal are Brooke's, Fitzherbert's, Rolle's, Comyn's, Viner's, and Bacon's. The more recent ones are called Digests, e.g., Fisher's.

**Abridgment of Damages**, the right of the Court to reduce the damages in certain cases.

**Abrogate**, to annul or repeal. See *Leges posteriores*.

**Abscond**, to leave one's usual residence in order to avoid legal proceedings. See *Act of Bankruptcy* and the Absconding Debtors Act, 1870.

**Absence**, non-appearance. A decree is said to be made in absence where a party to the action does not appear. *Absence beyond seas*, i.e., from the United Kingdom and the adjacent (including the Channel) islands, was a disability (*q. v.*), and still in some cases entitles a person to an extension of time for pleading or appealing. See *Mercantile Law*. *Absence cum dolo et culpa*, is a term used of wilful non-appearance to a writ, *subpœna*, citation, etc., or to delay or defeat creditors, or avoid arrest, either on civil or criminal process.

**Absolute**, complete, unconditional (e.g., covenant), not relative. A rule *absolute* is an order which can be forthwith enforced in contradistinction to a rule *nisi*, which commands the opposite party to appear on a day therein named, and

**show cause** why he should not perform the act, or submit to the terms therein set forth. In default of his appearance or showing good cause the rule is made absolute. By R. S. C. 1883, Ord. LII., r. 2, applications for a rule *nisi* in an action and in certain other specified proceedings are no longer to be made.

**Absolute Law**, the true and proper law of nature, which is immutable in theory, but not in application.

**Absolute Warrantice** (Sc.), a warranting or assuring of property against all claims whatever, by which warranty the grantor becomes liable for every defect in the thing granted.

**Absolvitor** (Sc.), an acquittal; a decree in favour of the defendant in any action.

**Absque impetitione vasti** (*without impeachment of waste*).

**Abstention**, keeping an heir from possession. (2) The tacit renunciation of a succession by an heir.

**Abstract of Title**, an epitome of the evidences of ownership, a document containing a sufficient summary of the deeds which show the nature of a person's right to a given estate, together with any charges or circumstances in anywise affecting it. A *perfect abstract* should show that the owner has both the legal and equitable estates at his own disposal perfectly unencumbered. In conditions of sale a "perfect" abstract means one as perfect as the vendor has, at the time of delivery, in his actual or constructive possession. An *abstract in chief* is one made from the original document or a copy of it, and not from a recital of it in another document.

**Abstracted multures.** See *Action of*.

*Abundans cautela non nocet.*—(Extreme care does no mischief.)

**Abuse of distress**, using an animal or chattel distrained, which makes the distrainer liable as for a conversion (*q. v.*).

**Abuse of process**, is when a person through the malicious and improper use of some regular legal proceeding obtains some advantage over his opponent.

**Abuttals**, or **Abbuttals**, the boundaries of any piece of land on every side, which are usually given in any conveyance of it, for purposes of description and identification.

**Accapitare**, to pay relief to lords of manors. *Capituli solimo accapiture*, is to pay a relief, or homage, to the chief lord on becoming his vassal.

**Accapitum**, money paid by a vassal upon his admission to a feud or holding; the relief due to the chief lord.

**Accedas ad curiam** (*go to the Court*), was an original writ to the sheriff, issued out of Chancery, where a man had received false judgment in a Hundred Court or Court Baron, or justice had been delayed.

**Accedas ad vicecomitem** (*go to the sheriff*). Where the sheriff had the writ called *pone* delivered to him, but suppressed it, this writ was sent to the coroner, commanding him to deliver a writ to the sheriff.

**Acceleration**, the hastening of the time for the vesting in possession of an expectant interest, by the surrender, merger, or extinguishment of a preceding estate or interest.

**Acceptance**. A person accepts a bill of exchange drawn upon him by writing his signature across it, with or without the word "accepted": he thereby undertakes to pay the bill when due, and is the person primarily liable. Before acceptance he is called the *drawee*; after it, the *acceptor*. An *Acceptance* may be general (absolute), special (qualified), i.e., conditional, partial, or local, i.e., undertaking to pay at one specified place only. A bill is *dishonoured* by non-acceptance, and thereupon an immediate right of action accrues to the holder. *Acceptance for honour supra protest* is where a person, not already liable thereon, after the bill has been *protested* (*q. v.*), accepts it for the honour of a party who is liable, or of him for whose account it was drawn. See 45 & 46 Vict. c. 61. See *Drawer, Indorsement, Reference*.

**Acceptilation** (Sc.), the verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not; the acceptance of something merely imaginary in satisfaction of a verbal contract.

**Access**, approach, or the means of approaching. The presumption of a child's legitimacy is rebutted, if it be shown that the husband had not access to his wife within such a period of time before the birth, as admits of his having been the father. (2) See *Light*.

**Accessory**, or **Accessory**, one who is not the actual perpetrator of a felony, but is in some way concerned therein. He may be an accessory (*a*) *before the fact*, e.g., by inciting or counselling, or (*b*) *after the fact*, by relieving or assisting the felon. (*a*) Stands in the same position in the eye of the law as if he were the principal. See *Principal*.

**Accession**, *property by*, is a doctrine grounded on the right of occupancy, and derived from the Roman law: it is (1) where a thing belonging to one becomes the property of another by being added to or incorporated with a thing

belonging to the latter. See *Alluvion*, *Fixtures*. (2) Where one makes a new thing out of materials belonging to another and thereby acquires the ownership thereof, subject to giving compensation to the former owner. This is more properly called *specificatio*. (3) Accession to a dignity means coming into enjoyment.

**Accessorium sequitur suum principale.**—(That which is the accessory or incident follows, *i.e.*, goes with, its principal; as, *e.g.*, in the case of crops or fixtures, which go as a rule with the land they are on.)

**Accident**, an equitable plea for relief, now admitted in all the Courts of Justice. See *Mistake*.

**Accite**, to summon.

**Accommodation Bill**, one to which a person puts his name as acceptor or drawer without having received any consideration, for the purpose of accommodating some other person who desires to raise money on it, and who is to meet the bill when due.

**Accommodation Land**, is that acquired for the purpose of improving the value of adjacent land.

**Accommodation Works**, works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway.

**Accord**, an agreement between two (or more) persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action. When the agreement is fulfilled, and satisfaction has been made, it is called *accord and satisfaction*, and operates as a bar to the right of action.

**Account duties**, are payable on a *donatio mortis causa*. See 44 Vict. c. 12, s. 38.

**Account**, or **Accompt**, a detailed statement of a series of receipts (credits) and disbursements (debits) of money, which have taken place between two or more persons. Accounts are either (1) *open* or *current*, where the balance is not struck, or is not accepted by all the parties; (2) *stated*, where it has been expressly or impliedly acknowledged to be correct by all the parties; or (3) *settled*, where it has been agreed and discharged. To make a *rest* in an account, or an *account with rests*, is at stated periods to strike a balance, so that interest may thenceforward be computed on the sum actually due, not merely on the original principal or debt. See *Compound Interest*, *Surcharge*, *Clayton's Case*. The accounts kept in the Paymaster-General's Office of funds

in Chancery are either *causewise*, i.e., the general accounts of money to the credit of each particular cause or action; or *separate*, i.e., when they have been carried over to the account of special individuals.

**Accountable receipt**, a written acknowledgment of the receipt of money or goods to be accounted for by the receiver, as distinguished from an ordinary receipt or acquittance for money paid in discharge of a debt.

**Accountant-General.** See *Paymaster-General*.

**Accountants to the Crown**, certain persons (e.g., brewers) and officers (see 13 Eliz. c. 4) accountable to the Crown for moneys received by them; the Crown has the first claim for such moneys on any land they may own.

**Accretion**, addition to property without the owner's act, e.g., by birth of young of animals, alluvion, or dereliction (*q.v.*).

**Accroach**, to attempt to exercise royal power.

**Accrual, Accruer.** A right accrues when it vests in a person, especially when it arises without his active intervention, e.g., by lapse of time, or determination of a previous right. For cases of *accruer*, see *Accession, Alluvion, Survivorship*.

**Accumulation.** See *Thellusson Act*.

**Accumulative sentence**, one passed before the first has expired, to commence upon its expiration.

*Accusare nemo se debet.*—(No one is bound to accuse himself.)

**Acknowledgment**, written and signed, of a *debt*, etc., is a bar to the Statutes of Limitation. (2) Acknowledgment by a married woman of a deed disposing of her interest in land is required by 3 & 4 Win. IV. c. 74. (3) Acknowledgment before witnesses, by a testator, of his signature already affixed to the will, whether by himself or some other person, is equivalent to signature in their presence.

**Acquest, or Acquit**, property obtained by purchase or gift.

**Acquiescence**, is where one with full knowledge of his right to impeach a transaction or enforce a right neglects to do so for such a length of time that it may fairly be inferred that the right has been waived. It may be *express* or *implied*.

**Acquittal**, a release or discharge, especially by a verdict. Is of two kinds. (1) By law. (2) By deed.

**Acquittance**, a release or written discharge of a sum of money due. See *Accountable Receipt*.

**Act in Pais**, a thing done out of court, and not a matter of record.

**Act of Bankruptcy**, one of certain acts of a debtor declared by the law to be evidence of insolvency, and on which is founded the adjudication of bankruptcy (*q. v.*). Such are the concealing of himself to avoid payment (see *Abscond*), fraudulent conveyance of his property, fraudulent preference, execution levied on his goods, notice of suspension of payment, and the declaration of inability to pay his debts. See the Bankruptcy Acts, 1883, c. 52, s. 4, and 1890, c. 71.

**Act of Curatory** (Sc.), the order by which a curator, or guardian, is appointed by the Court.

**Act of God**, an inevitable event, one which occurs without human intervention, and for which, therefore, no one is to be blamed, *e.g.*, death, flood, or tempest. On this ground insurers and carriers are released from liability for loss, and a person is in some cases discharged from his covenant or contract.

**Act of Grace**. The act so termed in Scotland was passed in 1696; it provides for the maintenance of debtors imprisoned by their creditors. It is applied in England to insolvent acts, and to general pardons granted at the beginning of a new reign, or on other great occasions.

**Act of Parliament**, an enactment of the Legislature. It may be: (1) Public. (2) Local or special. (3) Private or personal. See *Statute*.

**Act of Settlement**, 12 & 13 Wm. III. c. 2, limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body, being Protestants.

**Act of Supremacy**. 1 Eliz. c. 1, by which the supremacy of the Crown in matters ecclesiastical was established.

**Act of Uniformity**, the 13 & 14 Car. II. c. 11, which enacted that the Book of Common Prayer, then recently revised, should be used in every parish church, and other places of public worship. See 34 & 35 Vict. c. 37, and 35 & 36 Vict. c. 35.

**Act of Warding** (Sc.), a warrant to imprison a debtor.

**Actio ad exhibendum** (Roman law), an action instituted for the purpose of compelling production (*q. v.*).

**Actio bonæ fidei** (Roman law), one which the judge decided according to Equity, acting as *arbiter* with a wide discretion.

**Actio commodati contraria** (Roman law), one by a borrower against a lender, to enforce a contract.

**Actio conductio indebiti** (Roman law), one for the recovery of a sum of money paid by mistake.

• **Actio depositi contraria** (Roman law), one which a depositary has against a depositor, to compel him to fulfil his engagement.

**Actio depositi directa** (Roman law), one brought by a depositor against a depositary, to get back the thing deposited.

**Actio ex conducto** (Roman law), one by a bailor for hire against a bailee, to compel him to deliver the thing hired.

**Actio exercitoria** (Roman law), one brought against the owner of a ship (*Exercitor*) who employed his slave to navigate her, on contracts made by the slave in such capacity.

**Actio institoria** (Roman law), a similar action against the owner of a shop served by his slave. In both cases the slave was held to contract only as representing the master.

*Actio personalis moritur cum personā*.—(A personal action dies with the person.) A maxim meaning that rights of action arising out of torts are destroyed by the death of the person injured or injuring. By recent legislation (see 27 & 28 Vict. c. 115) this has been altered, and probably the only application of the maxim now is to torts to the reputation.

**Actio pro socio** (Roman law), an action by which a partner could compel his co-partners to perform the partnership contract.

**Actio redhibitoria** (Roman law), one brought by a purchaser to recover the price, for breach of implied warranty on the sale.

**Action**, a proceeding taken in a court of law. By the Judicature Act it is declared not to include criminal proceedings. Apart from that Act its chief classifications are these:—(1) (a) civil, to enforce a right; (b) criminal, to punish an offender. (2) (a) *in rem* (*against a thing*), to bind a thing; (b) *in personam* (*against a person*), to bind a person. This distinction now survives only in the Admiralty Court. (3) (a) real, (b) mixed, and (c) personal. This distinction has been abolished by 3 & 4 Wm. IV. c. 27, and 23 & 24 Vict. c. 126. (4) (a) Rescissory, (b) ordinary. See *Actions rescissory*. (5) Popular, e.g., *Qui tam* actions (*q. v.*) (6) *Ex contractu*, those which arise out of contract, and *ex delicto*, those which arise out of tort (*q. v.*). See *Actio personalis*, *Actiones nominatae*.

**Action of a writ**, a phrase formerly used when a defendant pleaded that the plaintiff had no right to the writ sued upon, although it might be that he was entitled to another writ or action for the same matter.

**Action of abstracted multures** (Sc.), an action for multures or tolls against those who are thirled to a mill, *i.e.*, bound to grind their corn at a certain mill, and neglect to do so.

**Action of adherence** (Sc.), one by a husband or wife in case of desertion, to obtain restitution of conjugal rights.

**Actionary** (Fr. *Actionnaire*), a shareholder.

**Actiones nominatæ**, writs for which there were precedents, as distinguished from *Actiones innominatæ*. See *Trespass*.

**Actions ordinary**, all actions not rescissory. See next title.

**Actions rescissory** (Sc.), are (1) actions of *proper improbation*, for declaring a writing false or forged; (2) actions of *reduction=improbation*, for the production of a writing in order to have it set aside or its effect ascertained, under the certification that the writing if not produced shall be declared false or forged; and (3) actions of *simple reduction*, for declaring a writing called for null until produced.

**Active**, existing; *e.g.*, a debt, or use. **Active trust**, one which has a duty connected with it, as opposed to a passive trust. See *Bare*.

**Actor**, a term borrowed from the Roman law to signify the person who has the active claim in a judicial proceeding, *e.g.*, as plaintiff, claimant, or demandant under the old practice.

*Actor sequitur forum rei*.—(A plaintiff follows the court of the defendant.) A maxim adopted from Roman law importing that the plaintiff in an action must bring his action against the defendant in that country to the laws of which the defendant is amenable. But the possession of property in a country makes a person amenable to the laws of that country, even though he is a foreigner or resident abroad.

*Actore non probante reus absolvitur*.—(When the plaintiff does not prove his case the defendant is acquitted.)

*Actori incumbit onus probandi*.—(The burthen of proof lies on a plaintiff.)

**Acts of Court**, legal memoranda of the nature of Pleas, especially in Admiralty Courts.

**Acts of Sederunt**, ordinances or rules of the Court of Session in Scotland, corresponding to the "General Rules," made from time to time under statutory authority by our English Courts.

**Acts of Union**. With *Wales*, 27 Hen. VIII. c. 27, confirmed by 34 & 35 Hen. VIII. c. 26. With *Scotland*, 6 Anne, c. 11. With *Ireland*, 39 & 40 Geo. III. c. 67.

**Actuary**, a registrar of a public body, a clerk; (2) one skilled in the business of insurance, the calculation of life interests, annuities, etc.

*Actus curiae* (or *legis*) *nemini facit injuriam*.—The act of the Court does wrong to no one.

*Actus Dei neminem gravabit* (or, *nemini nocet*).—The Act of God prejudices no one. See *Act of God*.

*Actus me invito factus, non est meus actus*.—(An act done by me against my will is not my act.) Thus the law presumes coercion by a prince over his subject, and by a husband (in general) over his wife.

*Actus non facit reum, nisi mens sit rea*.—(An act does not make a man guilty, unless he be so in intention.)

**Ad colligenda bona**, **Administration**, is granted where the estate is of a perishable or precarious nature, and regular probate or administration cannot be granted at once. See *Administration*.

**Ad diem** (*at the day*).

**Ad filum aquæ**, to the thread or centre line of the stream.

**Ad filum viæ**, to the centre of the way or road.

**Ad finem**, abbrev. *ad fin.* (*at, or near to the end*).

**Ad idem** (*tallying in the essential point, agreed*).

**Ad infinitum** (*without limit*).

**Ad interim** (*in the meantime*).

**Ad jura regis**, a writ which was brought by a clerk who had been presented to a royal living, against those who endeavoured to eject him to the prejudice of the king's title.

**Ad longum** (*at length*).

*Ad questiones facti non respondent judices; ad questiones legis non respondent juratores*.—[(In trial by jury) the judges do not decide questions of fact, nor the jury questions of law; (except where the question of fact is preliminary to the decision of a question of law.)]

**Ad quod damnum**, (1) a writ by which the owner of land over which a highway passes may obtain leave to divert it. (2) A writ issued to the sheriff before the Crown granted new liberties, e.g., fairs or markets, to inquire whether the public would be prejudiced. Both are now obsolete.

**Ad terminum qui preterit**, a writ of entry which lay for the owners of the reversion upon a lease, when the lease had expired.

**Ad valorem**, according to the value, e.g., a stamp or tax.

**Ad ventrem inspiciendum**. See *Venter*.

**Acordabilis denarii**, money paid by a vassal to his lord upon the selling or exchanging of a feud.

**Addictio** (Rom. law), the giving up to a creditor of his debtor's person.

**Addition**, the title, or place of abode of a person. As to addition of a defendant, see 14 & 15 Vict. c. 100, s. 24.

**Address for service**. A plaintiff's writ of summons (*q. v.*), and a petition or summons under the Trustee Acts, must contain an address where notice of future proceedings may be served by other parties.

**Ademption**, a revocation, or a taking away of a legacy. Where a testator having given a specific thing by his will alters or parts with it before his death, he *adeems* the legacy. See *Satisfaction*.

**Adjourn**, to put off the hearing to another day.

**Adjudication**, a judgment, or decision, *e.g.*, on claims of creditors. (2) That part of a docket of enrolment of a decree in Chancery under the old practice which set forth the order made by the Court. (3) Of *bankruptcy*, the declaring a debtor bankrupt. See *Bankrupt*.

**Adjuration**, a swearing or binding upon oath.

**Adjustment**, in the law of marine insurance, is the settlement of the amount to be received by the insured, and to be contributed by the several underwriters to the policy.

**Admanuensis**, one who swears laying his hand on the Testament.

**Admeasurement**, **Writ of**, (1) *of dower*, lay where a widow took or had assigned to her a larger dower than rightly belonged to her; (2) *of pasture*, lay where anyone having common of pasture surcharged the commonon--to correct the excess in either case. See *Surcharge*.

**Adminicular evidence**, explanatory or in support.

**Administration**, (1) the process of adjusting, protecting, and satisfying (if there be sufficient assets for the purpose) the various claims upon an estate. Hence the *administrative*, as opposed to the *contentious*, jurisdiction of the Court. In paying debts the assets are taken in the following order:—  
 (a) Personal estate not specifically bequeathed; (b) Real estate devised or ordered to be sold for payment of debts; (c) Real estate descended; (d) Ditto charged with payment of debts; (e) General pecuniary legacies; (f) Specific legacies, and real estate comprised in a specific or residuary devise; (g) Personal or real estate subject to a general power of appointment which has been actually exercised. For the

**Order** in which debts are paid, see *Debts*. (2) *Letters of administration* are granted either *generally*, or for a *limited* purpose or time; e.g. (i.) *de bonis non* (scil. *administratis*), to complete administration of an estate; (ii.) *cum testamento annexo*, when there is no executor to carry out the testator's will; (iii.) *durante minore aetate*, or *absentia*, where the sole executor is a minor, or out of the realm; (iv.) *ad litem*, to carry on an action.

**Administrator**, he to whom administration is granted of the effects of a person dying intestate, or without appointing executors. See *Administration*.

**Admiral**. See *Lord High Admiral*.

**Admiral of the Port of London**, one of the styles of the Lord Mayor of London, by virtue of a charter granted in the third year of James I.

**Admiralty, High Court of**, has two divisions of its jurisdiction: (a) the *Prize Court*, and (b) the *Instance Court*. See those titles, and *High Court of Admiralty*.

**Admission in pleading or evidence**, acknowledgment that an allegation is true. By the Judicature Act all allegations in pleadings not specifically denied are admitted. By R. S. C., 1883, Ord. XXXII., any party to a cause or matter may before trial call on any other party to admit any document or fact specified; and in case of refusal or neglect to admit, the cost of proof will be thrown on the party so refusing, etc.

**Admittance**, giving possession of a copyhold estate. Formal admittance is usually made by the steward handing to the tenant a rod (see *Verge*), or other symbol, according to the custom. It may, however, be dispensed with.

**Admittendo clericō**, a writ of execution addressed to the bishop or his metropolitan, requiring him to *admit* and institute the clerk or presentee of the plaintiff.

**Admittendo in sociū**, a writ for associating certain persons with justices of assize on the circuit.

**Admonition**, the lightest form of ecclesiastical censure.

**Admortisation**, the reduction of property in lands or tenements to mortmain, in the feudal customs.

**Adnichiled**, annulled, cancelled, made void.

**Adolescence**, the period between 12 in females and 14 in males till 21 years of age.

**Adoption**, an act by which a person appoints as his heir the child of another. There is not any law of adoption in

**Aequitas sequitur legem.**—(Equity follows the law.)  
**Equity.**

**Æstimatio capitis**, fines for offences committed against persons, estimated according to their rank and quality ordained by King Athelstane.

**Affectus punitur licet non sequatur effectus.**—(The intent is punished, although the consequence do not follow.)

**Affer**, to assess amerciaments or fines by a jury courts-leet.

**Affidatus**, a tenant by fealty, a retainer.

**Affidavit**, a written statement sworn before a person having authority to administer an oath, by a person called *deponent* (*q. v.*): (1) *of documents*, or *discovery*, sets out material documents then or formerly in deponent's possession; (2) *of increase*, sets out the extra expenses, counsel's fees, which do not appear on the face of proceedings, and must be evidenced on oath before they can be allowed on taxation; (3) *of plight*, deposes that a will is in the same condition in which it was found at testator's death (Probate practice); (4) *of means*, that a judgment debtor has means to pay the debt, and so should be committed in default. And see *Jurat*.

**Affidavit to hold to bail.** On affidavit by plaintiff defendant owes him £50 or upwards, and is about to leave England, and that plaintiff will thereby be materially prejudiced in the prosecution of his action, plaintiff may apply to a judge to hold defendant to bail. See 32 Vict. c. 62, s. 6.

**Affiliation**, the fixing anyone with the paternity of a bastard child and with the obligation to maintain it.

**Affinity**, relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. See *Consanguinity*.

**Affirm**, to confirm a voidable contract. (2) To agree the judgment of a lower Court. (3) See *Affirmation*.

**Affirmant**, a person who makes a solemn affirmation (*q. v.*) instead of taking an oath.

**Affirmanti, non neganti, incumbit probatio.**—(The proof is upon him who affirms, not upon him who denies.)

**Affirmation**, a solemn declaration without oath. The privilege of affirming without an oath in judicial proceedings is now extended to all persons who object to take an oath. See 51 & 52 Vict. c. 46.

**Affirmative pregnant**, an assertion implying a negative.

**Afforce**, to increase the assize if the jury disagree.

**Afforest**, to turn into a "forest" (*q. v.*).

**Affanchise**, to make free.

**Affray**, the fighting of persons in a public place to the terror of Her Majesty's subjects.

**Affreightment**, **Contract of**, is made with a shipowner or hire of his ship to carry goods. See *Freight, Charter-*

**Age**, formerly used as equivalent to majority; *e.g.*, to *me of age, non-age*, terms which still survive. A male can legally marry (with the proper consent) at fourteen; a male at twelve. A child under seven cannot be held criminally responsible; and between seven and fourteen there is a presumption of ignorance or incapacity.

**Agard**, award.

**Agency**, **Deed of**, one which creates a revocable and voluntary trust for payment of the settlor's debts.

**Agent**, one authorised by another (the *principal*) to do an act or transact business for him, and to bind his principal within the limits of that authority. An agent may be *general*, to do all business of a particular kind; or *special*, to do one particular act; and according to the scope of his authority is his power to bind his principal. See *Ultra vires, Del credere*.

*Agentes et consentientes pari pena plectentur*.—(Acting and consenting parties are liable to the same punishment.)

**Age-prier**, or **prayer**, an application that an action may be stayed until the applicant attains majority.

**Aggravation**, **Matter of**, is that which is ground for increasing the damages awarded for an injury, the damages when so increased being called *exemplary* (*q. v.*).

**Agild**, free from penalties.

**Agiler**, an observer or informer.

**Agio**, the difference in value between one sort of money and another.

**Agist**, **Agistment**, the feeding of other men's cattle on one's land for reward. This is *Bailment* (3) (*q. v.*). (2) The profit of such feeding. (3) The charging of lands with a certain payment towards maintenance of sea banks.

**Agnation**, kinship by the father's side, as distinct from *cognation*, or kinship by the mother's side.

**Agnomen**, a name derived from some notable personal circumstance, *e.g.* the name *Africanus*, borne by the two Scipios on account of their victories over the Carthaginians.

**Agreement**, the concurrence of two or more minds in

anything done or to be done. (2) A contract, especially one which is not under seal, *i.e.*, sealed. If under seal it is called a deed. (3) The preliminary heads of a formal contract to be afterwards drawn up. Agreements may be *executed*, *i.e.*, complete, performed; or *executory*, where something remains to be done by one or both of the parties.

**Agricultural Holdings (England) Act**, 38 & 39 Vict. c. 92, was designed to give agricultural tenants compensation for improvements on their holdings unexhausted at the expiration of the tenancy. The operation of the Act could, however, be excluded by agreement between landlord and tenant. It was consequently superseded by the Act of 1883, 46 & 47 Vict. c. 61, which, by s. 55, prevents the tenant from contracting himself out of his right to compensation. See also 51 & 52 Vict. c. 21.

**Aids** (*Auxilia*), were originally free gifts from the tenant to his lord, but came afterwards to be regarded as a right. They were—(i.) to ransom the lord; (ii.) to make his eldest son a knight; (iii.) to portion his eldest daughter. (2) Extraordinary grants to the Crown. (3) *To aid* is to remedy a defect in pleading by some subsequent proceeding, *e.g.*, a verdict. (4) See *Writ in aid*.

**Air.** The right to a free access of air is the natural right of everyone, interference with which by interruption or pollution, unless by virtue of an acquired easement (*q. v.*), is actionable.

**Airway**, a passage for the admission of air into a mine.

**Albinatus jus.** The *droit d'ambaine* in France (abol. 1791), by which the king was entitled to an alien's property on his death.

**Aleatory contract**, an agreement of which the effects depend on an uncertain event.

**Alia enormia** (*other wrongs*). A declaration in trespass usually concluded thus:—“and other wrongs to the plaintiff then did,” etc.

**Aliamenta**, a liberty of passage, open way, water-course, etc., for the tenant's accommodation.

**Alias** (*otherwise*), a second or further writ, which was issued after a former writ had expired without effect. (2) *Scil.*, *dictus (called)*, a second name applied to a person where it is doubtful which of two or more names is his real name.

**Alibi** (*elsewhere*), a defence resorted to where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence that he

was *in a different place* at the time the offence was being committed.

**Alien**, a person who is not a British subject, as opposed to (*a*) natural-born subjects, and (*b*) denizens (*q. v.*). An alien may by naturalization become, and obtain the privileges of, a British subject. By the Naturalization Act, 33 & 34 Vict. c. 14, certain disabilities of aliens were removed, and they were empowered to hold and dispose of property in all respects like British subjects; but they are still unable to own shares in British ships or to vote at elections. Aliens are so (*i.*) by birth (*nées*), (*ii.*) by election.

**Alien ami**, or **amy** (*friend*), a subject of a nation which is at peace with this country.

**Alien enemy**, a subject of a nation which is at war with this country.

**Alienage**, the state of an alien.

**Alienate**, or **Aliene**, to transfer property.

*Alienatio rei præfertur juri accrescendi*.—[Alienation is favoured (by the law) rather than accumulation.] See *Perpetuity*.

**Alienation**, a transferring of property to another. It is (*a*) voluntary, or (*b*) involuntary, where one is deprived of property by act of the law or of another, e.g., on bankruptcy. *Alienor* is one who transfers to an *alienee*. See *Restraint*.

**Alieni juris**, under another's authority. See *Sui Juris*.

*Alii per alium non acquiritur obligatio*.—(One man cannot incur a liability through another. [Unless the latter is his agent duly authorized].)

**Aliment** (Sc.), a fund for maintenance. See *Alimony*.

**Alimony**, the allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit, which is called alimony *pendente lite*, or at its termination, when she proves herself entitled to a separate maintenance, the fact of marriage being established.

**Alio intuitu**, with another intent than that alleged, *i.e.*, not *bond fide*.

**Aliunde**, from elsewhere, from another source, *e.g.*, *proof aliunde*.

*Allegans contraria non est audiendus*.—(A person making contradictory allegations is not to be listened to.)

*Allegans suam turpitudinem non est audiendus*.—(A person alleging his own infamy is not to be listened to.)

*Allegari non debuit quod probatum non relevat*.—(That which,

if proved, would not be relevant, ought not to be alleged; *scil.*, in pleading.)

**Allegation**, a statement of fact made in a legal proceeding. A plaintiff can only recover *secundum allegata et probata*, i.e., according to the tenour of such of his allegations as he can duly prove. See *Allegans*, *Allegari*.

**Allegiance**, obedience due from the subject to the sovereign. It may be (*a*) natural, by birth; (*b*) acquired, by naturalization, etc.; or (*c*) local, during residence in a country. The oath of allegiance is still required from certain officers of the Crown.

**Allenarly** (Sc.), *only*, a technical word restricting an estate.

**Aller san jour**, to go without day, i.e., to be finally dismissed from the Court, no further day being assigned for appearance. Said formerly of a successful defendant.

**Allocation**, an allowance made upon accounts in the Exchequer.

**Allocatione facienda**, a writ allowing to an accountant such sums of money as he has lawfully expended.

**Allocatur** (*it is allowed*), the certificate of the allowance of costs by the master on taxation.

**Allocatur exigent**. See *Exigent*.

**Allocutus**, the demand made of a prisoner, after verdict of guilty found against him, whether he has any reason to give why sentence should not be passed. It is entered on the record.

**Allodarius**, a tenant holding land on *allodial* tenure, i.e., not under any lord or superior. All land in England is held, in theory, of the Crown, and cannot therefore be allodial.

**Allograph**, a document not written by any of the parties thereto; opposed to autograph.

**Allonge**. If there be not room on the back of a bill of exchange to write all the indorsements, the supernumerary indorsements may be written on a slip of paper annexed to the bill and called an *allonge*.

**Allot**, to assign a share, e.g., of land on partition or inclosure, or in a company.

**Allotment**, (1) the thing (land or shares) allotted. As to *Poor Allotments*, see the Acts of 1873, 1882, 1887, 1890, and 1891. (2) The act of allotting. (3) *Allotment note*, a document by which a seaman stipulates for payment of part of his wages at stated intervals to persons therein named. A certain form is prescribed by the Merchant Shipping Act, 1854.

**Allow**, to admit as correct or valid, e.g., a demurrer (*q. v.*) or claim.

**All Fours.** A case is said to be on "all fours" with another when it agrees with it in the material points.

**Alluvion**, or **Alluvio**, land gained from the sea or a river by the washing up of sand and soil, so as to form *terra firma*. If the process be gradual and imperceptible, the new land belongs to the owner of that to which it is annexed and whereof it forms part; if sudden and considerable, the ownership is not changed. See *Avulsion*, *Derelict lands*, *Aqua cedit solo*.

**Alody**, inheritable land.

**Alsatia**, formerly a cant name for Whitefriars, a district adjoining the Temple, and which possessed the privilege of sanctuary, or freedom from arrest, within its precincts; abolished 1697.

**Alteration**. An instrument is said to be altered when any erasure or addition is made to it so as to alter its sense or effect. A *material* alteration is one which alters the rights of parties under the instrument, or may do so.

**Altius tollendi** (*scil.*, *jus*, Roman law), the right to raise the height of one's house to any extent one may think proper.

**Amalgamation**, the union of two incorporated companies or societies by one being merged in the other. See Companies Act, 1862, s. 161; Life Assurance Companies Act, 1870, ss. 14, 15.

**Amand** (*Sc.*), a fine or penalty.

**Ambassador**, a representative sent by one sovereign to another, with authority to treat on affairs of state. His person is protected from civil arrest, and his goods from seizure. His is the highest rank among diplomatic officials.

**Ambidexter** (*one who uses both hands*), a juror who takes bribes from both parties to influence his verdict. See *Embraceror*.

*Ambigua responsio contra proferentem est accipienda.*—(An ambiguous answer is to be taken against him who makes it.)

*Ambiguis casibus semper presumitur pro rege.*—(In doubtful cases the presumption is always in favour of the Crown.)

**Ambiguity**, doubtfulness, obscurity. There are two species of ambiguity: (*a*) *patent* and (*b*) *latent*; (*a*) where there is an obvious omission or inconsistency on the face of the instrument: this may not be supplied or explained by *extrinsic* evidence, *i.e.*, evidence not contained in the instru-

ment itself; (b) where the instrument being apparently free from obscurity, a doubt arises in carrying it into execution; e.g., from a name used in it being applicable to two persons or things. In such case extrinsic evidence is admissible.

**Amendment**, a correction or alteration of any pleading or statement in a cause or matter. Since the Judicature Act amendments in pleadings may be made without leave in certain cases, and with leave in all cases. See R. S. C., 1883, Ord. XXVIII.

**Amends, Tender of, or satisfaction**, is by particular statutes made a defence in an action for a wrong.

**Amentia**, insanity, idiotcy.

**Amercement, or Amerciament**, a fine assessed by a jury, not, as is usually the case, fixed by the Court or by statute.

**Amicus curiae** (*friend of the Court*), a stander by, not being a party to, or interested in, the cause, who informs the Court of any decided case or other fact of which it can take judicial notice.

**Amnery**, an almshouse.

**Amnesty** (*non-remembrance*), an act of pardon or oblivion, by which crimes against the government up to a date therein named are condoned, so that they can never thereafter be made the subject of a charge. An amnesty may be *general*, to all concerned in the offence, or *particular*, to one or more.

**Amortisation, or Amortisement**, an alienation of lands in mortmain (q. v.). (2) The payment off of bonds, stock, etc.

**Amotion, Amove**, to remove (1) from possession; (2) from a post or office.

**Ampliation**, an enlargement of time; a deferring of judgment till the cause be further examined.

**Amy**, or **Ami**, usually called *prochein amy*, the next friend (as distinguished from the guardian), suing on behalf of an infant, etc.

**An, jour, et waste** (*year, day, and waste*). A right of the Crown to forfeit a felon's lands for a year and a day, and to commit waste thereon. Now abolished.

**Anagraph**, a register or inventory.

**Analyst**, a person skilled in detecting the component parts or ingredients of substances.

**Ancestor**, he from whom another inherits real estate.

**Ancient demesne**, a tenure existing only in those manors which belong to the Crown in the reign of Edward the Confessor and William the Conqueror. The tenants are free-

holders and enjoy certain immunities, the chief of which is a right to sue and to be sued only in their lord's court.

**Ancient lights**, windows which have had uninterrupted access of light for twenty years and upwards. The prescriptive right to light which they thereby acquire is called *anciency* of light. See *Light*.

**Ancient Messuage**, a house erected before the time of legal memory, *i.e.*, the reign of Richard I.: in practice any house is ancient which was built before the time of living memory, and the origin of which cannot be proved to be modern. Such houses frequently have certain rights (*e.g.*, of common) attached to them and to houses built on the same sites afterwards. See *Prescription*.

**Ancient Writings**, documents upwards of thirty years old. These are presumed to be genuine without express proof, when coming from the proper custody.

**Ancillary**, that which is subordinate to, or assists, some other thing.

**Angel**, an ancient English coin of the value of ten shillings.

**Aniens**, or **Anient**, void, of no force or effect.

**Animals**, are either (*a*) tame or domesticated (*mansuetæ*), or (*b*) *feræ naturæ*. The latter are the property of anyone who catches and keeps them; but being by nature irreclaimable, they cease to be his as soon as they get their liberty again. In the case of certain animals, *e.g.*, pigeons, escape from the actual control of their owner does not affect his property in them so long as they have the intention of returning (*animus revertendi*). On the death of a man his deer (in a park), pigeons, or fish (in a stewpond) pass, unlike domestic animals, to his heir, and not to his executors; they are also the subject of larceny, but not so if they are in a place where they cannot at once be taken. There is no larceny of animals kept otherwise than for food or useful labour.

*Animus ad se omne jus dicit*.—(Intention attracts all law to itself.) In many important actions the law holds their efficacy to depend on the intention with which they are proved to have been performed; *e.g.*, in the matter of change of domicile, the intention of permanently abiding in the new residence (*animus manendi*), or of returning to the old one, is essential. An apparent exception to this exists in the criminal law, by which a person is held responsible for the consequences of his act, though he may have had no criminal intention. This, however, would be taken into consideration in the assessment of damages...

**Annats, Annates**, the first-fruits of a spiritual living, viz., one year's profits.

**Annual rent right** (Sc.), a deed whereby, in order to evade the law which previous to the Reformation forbade the taking of interest, a yearly rent was granted out of land instead of paying interest.

**Annuity**, a periodical payment of money either bequeathed as a gift, or secured by the personal covenant or bond of the grantor. It is charged either upon personalty or realty, and may be either perpetual, for life, or for years. If perpetual, it may be limited to the heirs (*annuity in fee*), or to the executors of the grantee (or *annuitant*).

**Annul**, to deprive of operation; e.g., a decree, adjudication of bankruptcy, etc.

**Annus deliberandi**, the year (now six months) allowed by the Scotch law for the heir to deliberate whether he will enter upon his ancestor's land and represent him.

**Annus luctus** (Roman law), the year after her husband's death, during which a widow was not allowed to marry.

**Answer**, under the old system of pleading, prior to the Judicature Act, was the defendant's statement of his case, now called his *Statement of Defence* (q. v.). A petition in the Chancery Division is said to be "answered" when the Secretary to the Master of the Rolls writes on it a fiat or memorandum of the day on which it is to be heard. See *Interrogatories*.

**Ante**, a reference to a previous part of the same book or statement.

**Antedate**, to date a document before the day of its execution. (2) Bills, notes, and cheques may be antedated, i.e., given an earlier date than that of the day they are made. See 45 & 46 Vict. c. 61, s. 13.

**Ante litem motam** (*before litigation commenced*).

**Antenati**, those born before a certain period, e.g., before marriage.

**Ante-nuptial**, before marriage. See *Settlement*.

**Anticipation**, in conveyancing means a dealing with property, income, etc., before the proper or specified time. Married women may be restrained by a will or settlement from aliening, by way of anticipation, during coverture, property settled to their separate use; the object of this provision being to prevent them, when under the influence of their husbands or others, from parting with their means of subsistence. By 44 & 45 Vict. c. 41, s. 39, the Court may

dispense with this restraint when it is for the woman's benefit.

**Antigraphy**, a copy or counterpart of a deed.

**Antinomy**, contradiction between two laws or two articles of the same law.

**Apertura testamenti**, a form of proving a will in the Roman law by acknowledgment of the witnesses before a magistrate.

**Apograph**, a copy, an inventory.

**Appanage**, or **Appennage**, originally the lands assigned by kings of France for the maintenance of their younger sons; (2) a possession of the Crown.

**Apparent**. See *Heir, Easement*.

**Apparitor**, a messenger, who cites and arrests offenders, and executes the decrees of the judges of the Spiritual Courts.

**Appeal**, an application by an *appellant* to a higher Court to rectify the order of the Court below. The opposite party is then called the *respondent*. Appeals to the Court of Appeal are brought by way of *re-hearing* (*q. v.*) on motion by the appellant; to the House of Lords, which is the highest court of appeal, by petition. In bankruptcy an appeal to the House of Lords can only be brought by special leave of the Court of Appeal. See *High Court, Appendix*. (2) **Of felony**, under the old law, was a criminal proceeding brought by one person against another, the ground for which was the particular injury done by the *appellee* to the *appellor*; e.g., by a widow against the murderer of her husband. Abolished by 59 Geo. III. c. 46.

**Appearance**, a formal step taken by a defendant on being served with a writ of summons, signifying his intention of contesting the plaintiff's claim. It can be made (*a*) in person, (*b*) by attorney, duly authorised, who is usually a solicitor, (*c*) by guardian, (*d*) by committee (*q. v.*). By R. S. C., 1883, Ord. XII., r. 22, a defendant may appear any time before judgment.

**Appellate jurisdiction**, the power of a superior Court to review the decision of an inferior Court. See the Act of 1876, c. 59.

**Appendant**, a hereditament annexed to another, e.g., an advowson is said to be appendant to a manor. See *Common*. Properly speaking, that only which is annexed by implication of law is appendant, all others being *appurtenant* (*q. v.*). One corporeal hereditament cannot be appendant to another, nor an incorporeal to an incorporeal.

**Appendix**, in appeals to the House of Lords and Privy Council, is a printed book annexed to the "case" of each party, and containing the documents and evidence used on the previous hearings. See *Appeal*.

**Appointee**, a person selected for a particular purpose. (2) The person in whose favour a power of appointment is executed.

**Appointment**. (1) The designation of a person for a particular office. (2) *Under a power*, a gift or distribution of property made by a person (called the *donee of the power* or *appointor*), under a power given him by some instrument. Such powers may be *general* or *particular*, i.e., limited to certain specified persons. An appointment is *exclusive* if limited to certain individuals out of the particular class specified by the power. Married women are often given a power of appointing by will, so as to avoid the necessity of obtaining their husband's consent. See *Will*.

**Apportionment**, a division of a rent, common, etc., according to the interest of the various parties therein. (See the Act of 1870, and 44 & 45 Vict. c. 44, s. 12). (2) A *contract* is *apportionable* when one party to it on performing part of his obligation thereunder can call on the other to fulfil his, *pro tanto*. (3) A *condition* is now *apportionable* by statute, i.e., waiver of a single breach of it does not put an end to it entirely, as used to be the case.

**Apposal of sheriffs**, charging them with money received upon the account of the Exchequer.

**Appostille**, an addition or annotation to a document.

**Appraisement**, a valuation. The writ of appraisement directs a valuation, e.g., of goods forfeited to the Crown.

**Apprentice**, one bound by indentures of apprenticeship to a master in some trade, art, or mystery, who covenants to teach him the same.

**Approbate**. A person may not *approbate and reprobate*; i.e., take advantage of one part of a deed and reject the rest.

**Appropriation**, the setting apart of money or goods to meet a particular demand. See *Clayton's Case*. (2) The annexing of an ecclesiastical benefice to the perpetual use of a religious body, which thus becomes the patron. See *Impropriation*.

**Approve**, to approve under the statute of Merton (20 Henry III. c. 4) was to appropriate and enclose portions of the waste land of the manor.

**Approver, or Prover**, an accomplice in crime who accuses others of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt. He is sometimes called “Queen’s evidence.” (2) Bailiff.

**Appurtenant**, pertaining or belonging to by grant or prescription. See *Appendant, Common. Appurtenances*, in conveyancing, is a general term for that which passes with the principal subject of the grant, such as liberties and easements.

*Aqua cedit solo*.—(Water passes with the soil.) In the eye of the law water is land covered with water; the ownership of water, therefore, goes with that of the soil beneath. Where a river divides properties belonging to different persons, the centre, or *medium filum*, of the stream is taken to be the boundary line. The Crown is presumptively entitled to the soil as far as the sea covers it, *i.e.*, up to high-water mark on the sea-shore and the banks of tidal rivers. Land gradually covered by the sea becomes Crown property; but it is otherwise of land covered by a sudden irruption of the sea. See *Allurion, Anulsion*.

*Aqua currit et debet currere*.—(Water flows and ought to flow; *i.e.*, there is no property in running water, merely a right to use it; and this right may only so be exercised as not to interfere with the use of the water by other persons similarly entitled.)

**Aquæ ductus** (Roman law), *scil., jus*, the right to carry a watercourse through another's land.

**Aquæ haustus** (Roman law), *scil., jus*, the right to draw water from the fountain, pool, or spring of another.

**Aquæ immittendæ** (Roman law), *scil., jus*, the right to allow the water from one's house to run upon and over a neighbour's land.

**Arage** (or **Arriage**), and **Carriage**, services of carriage formerly due by tenants to their lord.

**Arbitrary punishment** (Sc.), such as is left to the discretion of a judge.

**Arbitration**, the submitting of a matter in dispute to the judgment of one, two, or more disinterested persons, called arbitrators. It cannot extend to capital punishment. See the Common Law Procedure Act, 1854, ss. 11-17; Judicature Act, 1873, ss. 56, 57; 52 & 53 Vict. c. 49; *Rule of Court, Umpire*.

**Arbitrement and Award**, the technical plea in an old

common law action, that the parties had submitted the matter to arbitration, and an award had been made.

**Arca cyrographica**, a chest wherin all the contracts, mortgages, and obligations belonging to the Jews were preserved to prevent fraud, by order of Richard I.

**Archaionomia**, a collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Mr. Lainbard.

**Archbishop**, the chief of the clergy in his province, where he is, under the Queen, supreme in all ecclesiastical causes, and superintends the bishops. The Archbishops of Canterbury and Armagh are respectively called the Primate of all England and of all Ireland; those of York and Dublin the Primate of England and of Ireland, and are inferior in rank.

**Archdeacon**, a substitute for, and next in order to, the bishop. He has an ecclesiastical jurisdiction and court.

**Arches Court**, a court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the Dean of the Arches, because his court was anciently held in the church of St. Mary-le-Bow (*Sancta Maria de arcubus*), so named from the steeple, which is raised upon pillars, built *archwise*.

**Archetype**, the original type or copy.

**Archives**, a chamber or place where ancient records, charters, etc., are kept. (2) The records, etc., themselves.

**Argument**, the process of drawing inferences. (2) The discussion of a legal point by counsel. (3) The inference itself. Of (1) there are several distinct kinds to which different names have been assigned, *e.g.*, (i.) *ad hominem*, *i.e.*, founded on the individual circumstances or characteristics of the person to whom it is addressed; (ii.) *ad verecundiam*, *i.e.*, the appeal to respect for authority; (iii.) *ad ignorantiam*, founded on the inability (through ignorance) of the opposing party to reply; (iv.) *ad baculum*, the appeal to force; (v.) *ad misericordiam*, the appeal to compassion. Argument, or the process of reasoning, is also divided into (a) *à priori*, and (b) *à posteriori*; (a) is from the antecedent or cause to the consequent or effect; and so in ordinary parlance *à priori* means "at first sight," *i.e.*, from our knowledge of the general rule of causation applicable to the case; (b) is from the consequent to the antecedent.

**Argumentative**. A pleading in which the statement on which the pleader relies is implied instead of being expressed was, under the old system, called argumentative. (2) An

**Affidavit** or pleading is now called argumentative if it states not merely facts, but the conclusions of law to be drawn from those facts. This practice is improper.

**Armiger**, an esquire.

**Arms**. Under this term the law includes everything with which one strikes; thus sticks, stones, and fists are "arms." *Arma in armatos sumere jura simunt*.—(The laws permit the taking up of arms against armed persons.)

**Arraign**, to bring a prisoner to the bar of the Court to answer the matter charged upon him in the indictment. It consists of three parts, (a) calling him by name, (b) reading him the indictment, (c) asking him if he be guilty or not guilty. He may then either confess, plead not guilty, or stand mute (*q. v.*).

**Array**, a jury (*q. v.*). See *Challenge*.

**Arrears**, **Arrearages**, money unpaid at the due time, e.g., of interest or rent. See *Limitation of actions*.

**Arrentation**, licensing the owner of lands in a forest to enclose them with a low hedge and small ditch according to the assize of the forest, under a yearly rent.

**Arrest**, *of judgment*, an unsuccessful defendant may move that the judgment for the plaintiff be arrested or withheld, notwithstanding a verdict given, on the ground that there is some substantial error appearing on the face of the record which vitiates the proceedings. (2) *Of persons*, to restrain their liberty by some lawful authority. Arrest on *mesne process* (*q. v.*) was abolished by the Debtors Act, 1869. Touching the person is a sufficient arrest. (3) *Of ships*, by service of writ of summons in an action *in rem* in the Admiralty Court.

**Arrestment** (*Sc.*), answers to *attachment of debts* in English law; the judgment debtor is called the *arrestee*; the garnishee, the *common debtor*; and the judgment creditor, the *arrester*, or *user of the arrestment*.

**Arresto facto super bonis mercatorum alienigenorum**, a writ against the goods of aliens found within this kingdom, in recompence of goods taken from a denizen in a foreign country, after denial of restitution. See *Reprisal*.

**Arretted**, charged.

**Arrha**, an earnest; evidence of the striking of a bargain.

**Arrogatio** (Roman law), adoption of a person of full age; *adoptio* being that of a person under age.

**Arson**, the malicious firing of a house or other building.

**Art, Words of**, technical words.

**Art and Part** (Sc.). One is “art and part” guilty orders, incites, counsels, or assists a criminal in the execution of a crime. “To have neither art nor part” is to be neither contriver nor participator.

**Arthel**, a vouchee, one who answers for another.

**Article**, a complaint exhibited in the Ecclesiastical Court by way of libel. (2) The different parts of a libel, or of a responsive or counter allegation in the Ecclesiastical Courts.

**Articled clerk**, a pupil of a solicitor, who undertakes by articles of clerkship containing covenants mutually binding, to instruct the pupil in the principles and practice of the profession.

**Articles**, clauses or paragraphs of a document or agreement. (2) The agreement (*q. v.*) itself; (3) *of Religion*, the thirty-nine articles agreed on by Convocation in 1562; they must be subscribed to on taking holy orders; (4) *of Association*, the regulations of a company. See the Companies Act, 1862, Table A.

**Articles of the peace**, a complaint on oath made to a Court that the applicant goes in fear of his life or of bodily harm from the threats of another person, from whom sureties of the peace are thereupon taken for such a length of time as the Court shall think necessary.

**Articles of Roup** (Sc.), conditions of sale.

**Articles of War**, a code of laws for the regulation of the land forces made, prior to 1879, in pursuance of the several annual acts against mutiny and desertion. See the Army Discipline Act, 42 & 43 Vict. c. 33.

**Articuli Cleri**, statutes containing certain articles relating to the Church, clergy, and causes ecclesiastical, made at Lincoln.

**Articulus Cleri**, a resolution of Convocation.

**Artificial person**, a corporation or corporate body, a company.

**Ascendants**, the progenitors of a person in a direct line.

**Ascriptitius** (Roman law), a naturalized foreigner.

**Asportation**, carrying away or removing goods. In all larcenies there must be both a taking and a carrying away.

**Assach**, or **Assath**, a custom of purgation formerly used in Wales, by which an accused party cleared or purged himself of the accusation by the oaths of three hundred men.

**Assart**, or **Essart**, in the old forest law, the offence of pulling up coverts, so as to make the ground plain as arable land.

• **Assault**, strictly speaking, is a threatening to strike or harm ; if a blow be struck it is *battery* (*q. v.*). Assaults are *common* or *aggravated*, the former being those for which no special punishment is prescribed by the law. An assault is in civil law a tort for which damages are recoverable.

**Assay**, the testing of weights and measures and of coins.

**Assedation** (*Sc.*), a lease or feu right.

**Assembly, General**, the highest Ecclesiastical Court in Scotland.

**Assembly, Unlawful**, is one of three or more persons, to do an unlawful act. See *Riot*.

**Assent**. The title of a legatee is not complete until the executor has assented to the legacy, either by implication or expressly.

**Assertory covenant**, an affirming promise under seal.

**Assess**, to rate or ascertain an amount or value.

**Assessed taxes**, duties charged in respect of certain articles, as houses, servants, and carriages.

**Assessors**, literally those who sit by the side of another : persons appointed to assess taxes, rates, etc. (2) Persons associated with a judge or judges to advise them and assist their deliberations ; but they take no part in giving judgment. In Admiralty cases they are often employed.

**Assets**, property available for the payment of the debts of a person or corporation. The assets of a deceased person are : (i.) *real* or *personal* (see *Administration*) ; (ii.) *legal*, i.e., those which come to the hands of the executor by virtue of his office, or *equitable*, i.e., those which can only be reached by help of the Court. This distinction is abolished as regards persons dying after 1st January, 1870. *Assets by descent* are lands which come to the heir charged with the debts of his ancestor.

**Assidere**, or **Assedare**, to tax equally. (2) See *Assedation*.

**Assign**, to transfer property, especially personalty. By the Judicature Act, 1873, s. 25, sub-s. 6, choses in action are made assignable by an absolute assignment in writing, provided notice be given to the debtor, trustee, etc. ; the assign thereupon acquires all the rights and liabilities of the assignor. (2) To set out, e.g., dower (*q. v.*), or waste. (3) To specify. See *Breach, Assignment*.

*Assignatus utitur jure auctoris*.—(The assignee enjoys the rights of his assignor.)

**Assignee**, or **Assign** (*Concessionary*, *Sc.*), a person who takes some right, title, or interest in things by an assign-

ment, which may be (1) *by deed*, (2) *by law*. In the old creditor's assignees held the same position as trustees in bankruptcy now do. In each bankruptcy an *official* acted with the creditor's assignee.

**Assignment** (*Assignation*, Sc.), a transfer of property especially of personalty. (2) A transfer of the whole particular estate, or right, e.g., a lease, or contract usual words being "assign, transfer, and set over," other words indicating an intention to make a conveyance will amount to an assignment. See *Under-leas*.

**Assignment of Dower**, the ascertaining and settling of a widow's portion of her deceased husband's realty for dower.

**Assignment of Errors**, the formal statement of the omission or error in the record complained of.

**Assignor** (*Cedent*, Sc.), a person who transfers or conveys property to another.

**Assimulate**, to connect highways.

**Assisa** (Sc.), a sitting in session. (2) A law. (3) A writ.

**Assisa cadere**, to be nonsuited, as when there is a plain legal insufficiency in an action, that the plaintiff cannot successfully proceed any further in it.

**Assisa, continuanda**, an ancient writ addressed to the justices of assize for the continuation of a cause, when the facts put in issue could not have been proved in time by the party alleging them.

**Assise**, or **Assize**, a legislative enactment, e.g., the *Assise of bread* (*q. v.*). (2) Legal proceedings. (3) The jury, to sit together for the purpose of trying a cause. Hence judicial assemblies held by the Queen's commission in every county, as well to take indictments as to try causes at *Assizes*. *Prius*, are commonly termed the assizes. There are two commissions; (1.) *General*, which is issued twice a year to the judges of the High Court of Justice; two judges being usually assigned to every circuit. The judges in each case have four several commissions; (a) Of *Oyer and terminus*, directed to them and many other gentlemen of the county by which they are empowered to try treasons, felonies, &c. This is the largest commission. (b) Of *Gaol delivery*, directed to the judges and the clerk of assize associate, empowering them to try every prisoner in the gaol committed for offence whatsoever, so as to clear the prisons. (c) Of *Prius*, directed to the judges, the clerks of assize and others, by which civil causes, in which issue has been joined in

of the Divisions of the High Court of Justice, are tried on circuit by a jury of twelve men of the county in which the venue is laid. (d) A commission of the peace, by which all justices are bound to be present at their county assizes to give attendance to the judges or else suffer a fine. (II.) The other division of commissions is *special*, granted to certain judges to try certain causes and crimes. See now the Judicature Act, 1873, ss. 11, 16, 29, 37, 77, 93, and 99, under which, however, no very material alteration is made in the manner of holding the assizes. A cause or matter not involving any question or issue of fact may be tried and determined with consent at the assizes; *ibid.*, s. 29.

**Assise, of bread**, a statute regulating the price of bread; (2) *of the forest*, a statute touching orders to be observed in the king's forests; (3) *of darrein presentment* (*last presentation*), a real action which lay against anyone who interposed with the plaintiff's right to present to a benefice; (4) *of mort d'ancestre*, a real action against an *abator* (*q. v.*) who had entered on the death of the plaintiff's ancestor; (5) *of novel disseisin*, a real action where one had been recently disseised.

**Assiser**, an officer who has the care and oversight of weights and measures.

**Assistance, Writ of**, appears to have been first employed in the reign of James I. When on issuing a writ of sequestration the Commissioners are unable to obtain possession, a writ of assistance is issued to the sheriff to put them in possession.

**Assistant-Judge**, is a judge of the General or Quarter Sessions for Middlesex; he is salaried, and may appoint a deputy.

**Assisus**, rented or farmed out for such an assize or certain assessed rent in money or provisions.

**Assithment.** See *Assythment*.

**Associate**, was an officer in each of the Courts of Common Law, his duties being to superintend the entry of causes, and enter verdicts and draw up the certificates of judgments and orders at *Nisi Prius*. See *Postea*. Since the Judicature Act associates are styled Masters of the Supreme Court, of which they are now officers.

**Association**, a collection of persons for a certain purpose. See *Company, Articles, Memorandum*. (2) A writ or patent sent by the Crown to the justices appointed to take assizes to five others (serjeants-at-law, for instance) associated with

them ; it is usual where a judge becomes unable to attend to his circuit duties, or dies.

**Assoile**, to deliver from excommunication ; to acquit.

**Assoilzie** (Sc.), to acquit or find not guilty.

**Assumpsit**, the name of an action which lay for damages for breach of a *simple* contract, *i.e.*, one not under seal. It was a species of *action on the case* (*q. v.*). (1) Common ; (2) special.

**Assurance**, or **Common Assurance**, the legal evidence of the transfer of property. See *Conveyance*. (2) See *Insurance*.

**Assured**, a person assured or indemnified by the undertaking of another. See *Assurer*.

**Assurer**, one who undertakes to indemnify against certain risks or dangers ; an underwriter. See *Insurance*.

**Assythment**, damages recoverable by the heirs or representatives of a person killed from the person killing.

**Aster**, a resident.

**Astipulatio** (Roman law). See *Adstipulator*.

**Astrarius hæres** (Roman law), an heir apparent who has been placed, by conveyance, in possession of his ancestor's estate during such ancestor's lifetime.

**Astriction to a mill**, a servitude by which grain growing on certain lands or brought within them must be carried to a certain mill to be ground, a certain multure or price being paid for the same. See *Action of abstracted multures*.

**Astrihilibet**, a forfeiture of double the damage.

**Asyle**, **Asylum**, a sanctuary or place of refuge for offenders to fly into ; (2) a place where lunatics are lodged and treated. Since the year 1853 the licensing and inspection of lunatic asylums has been the subject of several enactments of the legislature.

**At arms length**. One who has an advantage over another by virtue of holding a position of trust, is bound, on a proposal for a contract between them, to divest himself entirely of that authority, influence, or advantage which he possesses, so as to place himself on an equality, and to let the negotiation proceed as between two independent persons. This is called putting *at arms length*. It is most frequently applicable to transactions between solicitor and client, trustee and cestui que trust.

**Atavus**, the great grandfather's or great grandmother's grandfather. The ascending line of lineal ancestry runs thus :—Pater, Avus, Proavus, Abavus, Atavus, Tritavus.

**Atia**, ill will. See *De odio et atia*.

**Ats.**, an abbreviation denoting "at the suit of"; thus C. D. (defendant), *ats.* A. B. (plaintiff).

**Attach.** See *Attachment*.

**Attachiamenta bonorum**, a distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt. —

**Attachiamenta de spinis et boscis**, a privilege granted to the officers of a forest to take thorns, brush, and windfalls.

**Attachment**, is (1) of a person; (2) of goods: (1) is effected by writ of attachment, and is either (a) in an action; *e.g.*, for contempt of an order, in which case the *contemnor* is kept in prison until he has purged his contempt; or (b) at the discretion of the justices on a bare suggestion, or of their own knowledge, in order, *e.g.*, to punish disobedience to the Queen's writs; (2) is either (a) of debts (see *Garnishee*); or (b) in the Mayor's Court. See *Foreign Attachment*.

**Attachment of the forest**, one of the three Courts formerly held in forests. The highest was called Justice in Eyre's seat; the middle, the Swainmote; the lowest, the Attachment.

**Attachment of privilege**. When a person by virtue of his privilege calls another into that court to which he himself belongs, to answer some action. (2) A power to apprehend a person in a privileged place.

**Attainder**, the extinction of civil rights which resulted (until 1870, when it was finally abolished) from a sentence of death or outlawry for treason or felony. The two chief consequences were forfeiture of the criminal's property, and *corruption* of his blood so that no title could be traced through him; as to which latter see 3 & 4 Will. IV. c. 106, s. 10. See also 13 & 14 Vict. c. 60, s. 46; 32 & 33 Vict. c. 23.

**Attaint**, under attainder; (2) *writ of*, issued to inquire whether a jury gave a false (*i.e.*, corrupt) verdict, that so the judgment following thereupon might be reversed.

**Attainture**, legal censure.

**Attempt, An**, to commit a crime is punishable even though unsuccessful. In some cases, *e.g.*, murder, it is a felony.

**Attendant Term**. See *Term*.

**Attentates**, proceedings in a court of judicature, pending suit, and after an inhibition is decreed and gone out.

**Attermoring**, granting time for payment of a debt.

**Attestation**, evidence by witnesses to the execution of any instrument.

**Attestation Clause**, the sentence subscribed to a written

instrument signed by the witnesses to its execution, stating that they have witnessed it. They are then *attesting witnesses*, and can be called at any future time to identify the instrument and prove its due *execution*. See 1 Vict. c. 26, s. 8, as to *wills*. A gift by will or codicil to an attesting witness of that will or codicil is void.

**Attested Copy**, a verified transcript of a document.

**Attorney**, one appointed by another to act in his place either (1) in a legal matter or proceeding; in which case the attorney, since the Judicature Act, is called a solicitor; or (2) in a private matter or for a certain purpose; in which case the instrument by which the attorney is appointed is called a power or letter of attorney. See *Execution, Power of Attorney*.

**Attorney-General**, the principal counsel of the Crown, who conducts prosecutions on behalf of the Crown if required (see *Public Prosecutor*), and represents the Crown in matters connected with charities and patents. He also is responsible in the House of Commons for the Government of the day in all questions of law. The Prince of Wales and the Queen Consort have each an Attorney-General.

**Attornment**, the acknowledgment of a new lord on the alienation of land; (2) the agreement of the owner of a particular estate in land to *attorn to*, or become the tenant of, a person who has acquired the estate next in reversion or remainder, or the right to the rent or other services by which the land is held.

**Auctioneer**, a person licensed to conduct sales or auctions. He is the agent of both vendor and purchaser for the purpose of binding them by his memorandum of the sale.

**Audiendo et terminando**, a writ or commission to certain persons to appease and punish any insurrection or great riot.

**Audience Court**, a court of the Archbishop of Canterbury having the same authority as the Court of Arches, but inferior in dignity.

**Audit**, an examining of accounts, which may be either (*a*) *detailed*, or (*b*) *administrative*; (*a*) is the comparison of vouchers with the sums debited as paid; (*b*) the comparison of the sums debited with the authorities to pay. See *Surcharge*.

**Auditâ querelâ [defendantis]**, was an equitable action whereby a person against whom judgment had been given might prevent execution, on the ground of some matter of defence which there was no opportunity of raising in the original action. Abolished by Judicature Act, 1875, Ord. XLII., r. 22.

**Augmentation, Process of** (Sc.), is raised by the minister of a parish for the purpose of obtaining an increase of stipend.

**Aula ecclesiæ**, the nave or body of a church, where temporal courts were anciently held.

**Aula Regis**, or **Regia**, a court established by William the Conqueror: it was composed of the great officers of state, and followed the king's household in all his expeditions.

**Aulnager**, an officer of the excise who formerly measured all woollen cloth made for sale, and estimated the duty to be paid thereon.

**Aurum Reginæ** (*Queen's gold*), anciently a revenue of the queen consort, due from every person who made a voluntary offering or fine to the king amounting to ten marks or upwards, for some privilege conferred upon him by the king.

**Auter.** See *Autre*.

**Authentic act**, that which has been executed before a notary or other public officer, duly authorised, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register.

**Authentication**, an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do.

**Authentics**, a collection of the *Novellæ Constitutiones* (*additions to the Code*) of Justinian, made by an anonymous author.

**Authority**, power or right conferred on a person; usually by another to act on his behalf, so that the person authorized may do such act without incurring liability. See *Agent*; (2) a public body having certain powers or jurisdiction; (3) decided cases, opinions of text writers, and the like cited in arguments.

**Auto da fe** (*act of faith*), public readings of trials and sentences of the Inquisition.

**Autre (auter) droit**, in right of another; e.g., a trustee holds in the right of his cestui que trust.

**Autrefois acquit** (formerly acquitted), a plea in criminal cases, that one has been already acquitted on the same charge.

**Autrefois attaint** (formerly attainted), a plea in criminal cases, that one is still attainted. See *Attainted*.

**Autrefois convict** (formerly convicted). Before 6 Geo. IV. c. 25, a man convicted of a clergyable felony, and who had prayed the benefit of clergy, might plead such conviction and

prayer of clergy in bar of any subsequent indictment, either for the felony of which he was convicted, or for any other clergyable felony committed by him previously to his conviction. This statute restricted the benefit of the allowance of clergy to the charge upon which it was allowed, and now a previous conviction can only be pleaded in bar of any subsequent indictment for the same felony. See *Benefit of clergy*.

**Autre vie**, *Tenant pur* (tenant for another's life). An estate for the life of another is an estate of freehold, though it is the lowest or least estate of freehold which the law acknowledges. An estate for the life of another is not so great as an estate for one's own life.

**Auxilium curiæ**, a precept or order of Court citing a person, at the suit of another, to warranty. (2) See *Aid*.

**Auxilium facere alicui in curiâ regis**, to become another's attorney and representative in a court of law, an office formerly undertaken by courtiers for their dependents in the country.

**Auxilium regis**, the king's aid (*q. v.*); money levied in former times, when the sovereign provided out of his privy purse for many departments of the public service.

**Auxilium vicecomiti**, a customary aid (*q. v.*) anciently payable to sheriffs out of certain manors, for the better support of their offices.

**Avail**, profit of land.

**Avail of marriage** (*Sc.*), a sum paid on marriage by a vassal to his superior.

**Aval, Avalum**, surety for payment.

**Avenge**, payment in oats made by a tenant to his landlord for rent, etc.

**Aver**, (1) a beast of the plough (see *Avernum*); (2) money; (3) to prove to be true; (4) to allege as true (in pleadings); whence *Averment*.

**Average**, (1) a service which a tenant owes to his lord by doing work with his *avers* or beasts. (2) A contribution, or adjustment of loss, made by merchants when goods have been thrown overboard for the safety of a ship. It is either *general*, *i.e.*, where the loss having been incurred for the general benefit, the owners of the ship and all that have cargo on board contribute proportionately towards making good the loss; or *particular*, where the loss has been accidental, or not for the general benefit, and therefore there is no general contribution. An *average bond* is a deed executed by the several persons liable to contribute, empowering an

arbitrator to assess the amount of their contributions. See *General average*. (3) A small duty paid to masters of ships over and above the freight; known also as *primage and average*. (4) Stubble, or short standing straw left in corn-fields after harvest. In Kent it is called *gratten*, and in other parts *roughings*. (5) Average, *i.e.*, mean, prices of articles sold within a certain period or district.

**Averiis captis in withernam**, a writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff.

**Averium**, the best live beast, due to the lord as a heriot on his tenant's death.

**Aversionem, Sale per**, sale by bulk.

**Avitios**, left by a person's ancestors.

**Avizandum**. In the Scotch Courts the judges are said to "make avizandum" when time is taken to consider judgment. In the English Courts this is denoted by the term *curia advisari vult*.

**Avoidance**, of a *benefice*, takes place when it is void of an incumbent, in which sense it is opposed to *plenary*. (2) The making of a transaction or instrument void, or of no effect. (3) See *Confession*.

**Avoucher**, the calling upon a warrantor to fulfil his undertaking. Under the feudal system, when the tenant's title was impugned, he *avouched* (or vouched) his landlord to defend his right. See *Voucher*.

**Avowant**, one who makes an *avowry*.

**Avowry**, or **Advowry**, (1) a declaration; (2) a pleading in the action of replevin, which stated the nature and merits of the defence, and justified or avowed taking the distress in his (the defendant's) own right, which, if established, would entitle him to a judgment *de retorno habendo*.

**Avowterer**, **Avouterer** (*Arowtry*), an adulterer.

**Avulsion**, land separated by an inundation or current from other land of which it originally formed part. See *Alluvion*, *Aqua cedit*.

**Avus**, a grandfather. See *Atarus*.

**Award**, (1) to adjudge, or assess, *e.g.*, damages; (2) the decision of an arbitration, which is binding on the parties, unless set aside on the ground of *mala fides* on the part of the arbitrator, or some palpable mistake in the award, or a misconception by him of his duty. When a submission to arbitration (*q. v.*) is made a rule of Court under the Common

Law Procedure Act, 1854, the award can be enforced like the judgment of a court of law.

**Away-going** (or *Way-going*) **crops**, those sown during the last year of a tenancy, but not ripe until after its expiration. The right which an outgoing tenant has to enter, cut, and take an away-going crop when ripe is sometimes given to him by the express terms of the contract, but, where that is not the case, he is generally entitled to do so by the custom of the country. Sometimes the incoming tenant is bound to buy the crop of him at a valuation.

**Awm**, a measure of wine containing forty gallons.

**Ayant cause**, a receiver; also a successor, or one to whom a right has been assigned, either by will, gift, sale, or the like.

**Ayle**, a grandfather.

## B.

**B. R.**, *Bancus Regiae*, Queen's Bench. See

**Backberinde**, or **Backverinde** (bearing upon the back), used formerly of a thief apprehended with the things stolen in his possession, also called being taken with the *mainour*, as having the goods in his hand.

**Back-bond** (Se.), a deed, usually separate, attaching a qualification or condition to the terms of an absolute disposition, and thus constituting a trust.

**Backing a warrant**. Where a warrant which has been granted in one jurisdiction is required to be executed in another, then, on proof of the handwriting of the justice who granted the warrant, a justice in such other county endorses or writes his name on the back of it, and thus gives authority to execute the warrant in such other county.

**Backside**, a yard at the back part of or behind a house.

**Backwardation** (Stock Exchange), a sum paid by a seller of stock, etc., in consideration of the delivery of it being deferred till the next account day. See *Continuation*.

**Bad** (in substance). The technical word for unsoundness in pleading.

**Badger**, a person who buys corn or victuals in one place, and carries them to another to sell and make profit by them.

**Baga**, a bag or purse. Hence the Petty-Bag-Office (*q. v.*), because all original writs relating to the business of the

Crown were formerly kept in a little sack or bag—in *parva baga*.

**Bagavel**, a toll granted by Edward I. to the citizens of Exeter, upon all manner of wares brought to that city to be sold, to be applied towards the paving of the streets, repairing the walls, and maintaining the city.

**Bail**, to set at liberty a person arrested or imprisoned, on security (or bail) being taken for his appearance on a day and at a place named. Between bail and mainpernors there is this marked distinction: *mainpernors* are merely a person's sureties, who cannot imprison him themselves to secure his appearance, but *bail* may, for they are regarded as his gaolers, to whose custody he is committed. The word "bail" is never used with a plural termination. See *Bailable*.

There are several kinds of bail at Common Law:

(1) *Common bail*, or bail below, is given to the sheriff, after arresting a person on a bail bond (*q. v.*) entered into by two sureties, on condition that the defendant appear at the day and in such place as the arresting process commands.

(2) *Special bail*, or bail above, or bail to the action, are persons who undertake generally, after appearance of a defendant, that if he be condemned in the action, he shall satisfy the debt, costs, and damages, or render himself to the proper prison, or that they will do it for him.

(3) *Bail on an attachment*. When a defendant is arrested upon a writ of attachment, he is brought before a Court or a judge and sworn to answer interrogatories, and then committed, unless, by leave of a Court or a judge, he enter into a recognizance with sureties, for his appearance in Court from day to day, to answer interrogatories concerning such matters as may be objected against him.

(4) *Bail in actions of ejectment*. See 15 & 16 Vict. c. 76, ss. 213, 215, 216.

**Bail-bond**, an instrument prepared in the sheriff's office after an arrest, executed by two sufficient sureties and the person arrested, and conditioned for his causing special bail to be put in for him in the court out of which the arresting process issued.

**Bail Court**, sometimes called the Practice Court, was an auxiliary of the Court of Queen's Bench. See also *The Coroners Act*, 1887, s. 5.

**Bailable**. An arresting process is said to be bailable when the person arrested may obtain his liberty on giving bail;

e.g., a *capias* on *mesne* process is bailable; a *capias ad satisfaciendum* is non-bailable. A magistrate may in all cases of felony, except treason, and must in all cases of misdemeanor, except those specified in 11 & 12 Vict. c. 42, s. 23, admit to bail a person committed by him.

**Bailee**, a person to whom goods are entrusted for a specific purpose. See *Bailment*.

**Bailie** (Sc.), a magistrate.

**Bailiff**, an officer who puts in force an arresting process, a sheriff's officer. He usually gives security to the sheriff against liability for his actions, hence *bum-bailiff*, i.e., bound-bailiff; (2) special; (3) of manors; (4) of liberties; (5) of County Courts.

**Bailiff errant**, a bailiff's deputy.

**Bailiwick**, (1) the jurisdiction of a bailiff; (2) a county; (3) a liberty exempted from a sheriff, over which a bailiff is appointed by the lord of the liberty or franchise, with such powers within his precinct as an under-sheriff exercises under a sheriff.

**Bailment**, a compendious expression to signify a contract resulting from the delivery of goods by a *bailor* to a *bailee*, on a promise by the latter to return them when the purpose is fulfilled for which they were delivered.

Bailments are divisible into three kinds:—(1) Those in which the trust is exclusively for the benefit of the bailor, or of a third person, when the bailee is liable for gross negligence only. (2) Those in which the trust is exclusively for the benefit of the bailee, who is then bound to the very strictest diligence; and (3) those in which the trust is for the benefit of both parties, or of both or one of them and a third party; when the bailee must exercise an ordinary and average degree of diligence. (1) embraces deposits and mandates ("depositum," "mandatum"); (2) gratuitous loans for use ("commodatum"); and (3) pledges or pawns, hiring, and letting to hire ("locatio et conductio"), and carriage. See *Carrier*.

**Bailor**, or **Bailer**, a person who commits goods to another person (the bailee) in trust for a specific purpose.

**Bail-piece**, a piece of parchment containing the names of special bail, with other particulars, which being signed by a judge, is filed in the court in which the action is pending; whereupon notice of the bail having justified (i.e., been approved) is then given to the opposite party.

**Bairman**, a bankrupt.

**Balance-order**, an order served on a contributory to a company to pay up the balance of a call due from him.

**Ballastage**, a toll paid for the privilege of taking up ballast from the bottom of a port or harbour.

**Ballivo Amovendo**, an ancient writ to remove a bailiff from office.

**Ballot, Vote by**, a method of secret voting, introduced in parliamentary and municipal elections by 35 & 36 Vict. c. 33, which Act is continued from year to year.

**Ban**, or **Bann** [Teut.], a proclamation or public notice, or summons or edict, whereby a thing is commanded or forbidden. Hence *bannire*, to summon, and *banns*, in the plural, the publication of an intended marriage. (2) A denunciation or curse.

**Banc** (or **Banco**), **Sittings in**, [*Bancus Regiae*, or *Banc la Reine*, is the Queen's Bench. *Bancus communium Placitorum*, or *Banc le Common Pleas*, is the Court of Common Pleas, or the Common Bench], the sittings of a Superior Court of Common Law as a full Court, as distinguished from the sittings of the Judges at *Nisi Prius* or on Circuit.

**Bancus Superior**, abbrev. *Banc. Sup.*, the Upper Bench; the King's Bench was so called during the Protectorate.

**Bandit**, a man outlawed, put under the ban of the law.

**Baneret**, or **Banneret**, a knight made on the field of battle. He ranks next to a baron.

**Banishment**, a forsaking or quitting the realm, entailing civil death. It is of two kinds:—one, voluntary and upon oath, called abjuration, the other upon compulsion, for some offence.

**Bank credit**, accommodation allowed to a person on security given to a bank.

**Bank-note**, a promissory note issued by a bank undertaking to pay on demand a sum therein specified. Bank-notes are legal tender (*q. v.*) in certain cases.

**Bankers' cheques**, For the law of, see 45 & 46 Vict. c. 61.

**Bankrupt**. A debtor who does certain acts, called *acts of bankruptcy* (*q. v.*), may be adjudged bankrupt, and so made liable to the bankruptcy laws. The Bankruptcy Act of 1869 has been repealed by the Act of 1883, 46 & 47 Vict. c. 52 (amended by 53 & 54 Vict. c. 71), the chief objects of which are to discourage a too ready recourse to the process of bankruptcy for the purpose of getting rid of a person's liabilities, and to prevent the dissipation of a bankrupt's assets amongst persons other than his creditors. The first result is sought

to be obtained by making the discharge of a bankrupt conditional on a favourable report of the *official receiver* (*q. v.*) as to his conduct and affairs (s. 28); by prohibiting an undischarged bankrupt from gaining credit from any person for £20, or upwards, without informing such person that he is an undischarged bankrupt; and by continuing the disqualifications to which a bankrupt is subjected by the Act until he has paid his debts in full, or has obtained his discharge *with* a certificate that his bankruptcy was caused by misfortune without any misconduct on his part (ss. 32, 35). See *Discharge*. The second result is aimed at by subjecting trustees in bankruptcy to more stringent regulations and a more constant scrutiny, and also by making their remuneration depend partly on the amount of assets they recover for the creditors and partly on the dividends they distribute. Trustees in bankruptcy are by the Act subjected to the control of the creditors at a general meeting, the committee of inspection, the Board of Trade, and the Court, *i.e.*, the High Court or County Courts. The Act also provides for the summary administration of bankrupts' estates in small cases (ss. 121, 122). A *bankruptcy petition*, which by the Act may now be presented by the debtor himself as well as by a creditor, is followed by a *receiving order* for protection of the estate, whereby an official receiver is constituted receiver of the debtor's property; thereupon a general meeting of his creditors is held, and if they resolve that he be adjudged bankrupt, or if no composition is agreed upon within a limited period (s. 20), the adjudication in bankruptcy follows as a matter of course; and the debtor's effects become divisible amongst his creditors.

**Bannimus**, the form of an expulsion of a member from the University of Oxford, by affixing the sentence in some public place, as a denunciation or promulgation of it.

**Bannitus**, or **Banniatus**, an outlaw; a banished man.

**Bannum**, or **Banleuga**, the bounds of a manor or town.

**Baptism, Registry of.** See *Registration*.

**Bar**, a partition running across the courts of law, within which solicitors, being officers of the Court, are admitted, as are also queen's counsel, barristers with patents of precedence, and serjeants, in virtue of their ranks. All other barristers and the public must remain outside it. Parties who appear in person are placed within the bar on the floor of the Court. (2) A legal obstacle: to *bar* a debt or entail is to destroy it.

**•Bar, Plea in**, a pleading showing some ground for barring or defeating an action at common law.

**Bar, Trial at**, the trial of a cause before a full Court of three or more judges of the Superior Court instead of a single judge at *Nisi Prins*.

**Bare, or dry, trustee**, one whose active duties have come to an end, so that he can be compelled by his *cestui que trust* to convey the property according to his direction.

**Bar-fee, or Barr-fee**. A payment of £20 formerly taken by a sheriff or gaoler from an acquitted prisoner.

**Bargain and Sale**, an agreement for sale of goods which passes the property at once. (2) A form of conveyance of real property, (*a*) statutory (see *Lease* and *Release*); (*b*) at common law, which is used in the case of a sale by executors with a mere power to sell. A bargain and sale (*a*) of freehold has to be enrolled.

**Barleycorn**, the third of an inch; (2) in conveyancing, a nominal consideration or rent.

**Barmote, Barrmote, or Barghmote**, a court, not of record, within the Hundred of the Peak in Derbyshire, for the regulation of possessions and trade of the miners.

**Baron**, the lowest degree of nobility: they hold (*a*) by prescription; (*b*) by patent. (2) Judges of the Exchequer. Since the Judicature Act, 1877, they are styled Justices of the High Court. (3) Husband (*feme*, wife), now disused. (4) Baron of the Cinque Ports, a freeman (old charters); later, a member of Parliament.

**Baronet**, a dignity descendible to issue male, originally created in 1611, and taking precedence of all knights.

**Barony of land**, a quantity of land amounting to 5 acres. In Ireland, a subdivision of a county.

**Barratry, or Barretry (Barrator)**, (1) *Common*, the offence of constantly stirring up quarrels amongst Her Majesty's subjects, whether at law or otherwise; (2) any illegal or fraudulent conduct by the master or crew of a ship by which the freighter or owner is injured; (3) in Scotland, the crime of a judge who is induced, by bribery, to pronounce a judgment; (4) the simony of clergymen, going abroad to purchase benefices from the see of Rome.

**Barrier**, the wall of coal left between two contiguous mines.

**Barrier Act** (Sc.), regulated the form of procedure of the General Assembly of the Church of Scotland.

**Barrister**, one who has been admitted to plead at the Bar (*q. v.*). He may not sue for his fees, which are an

**honorarium**; and is not liable for negligence, or for anything spoken by him relative to the cause in hand and in pursuance of his instructions.

**Base-court**, an inferior Court, not of record.

**Base-estate** (*Bassa tenura*, as opposed to *alta*, or military), lands held by base tenants, who performed certain prescribed villeinous services to their lords. There is a difference between a base estate, and villenage; for to hold in pure villenage is to do *all* that the lord commands.

**Base-fee**, otherwise called a fee *qualified* or *conditional*, is an estate of freehold conditioned to determine on the happening of a particular event; such as the failure of heirs male, the ceasing to be tenant of Blackacre, and the like; (2) the estate created by a tenant in tail who bars the entail without the consent of the Protector of the Settlement (*q. v.*); and thus, only the issue of the tenant in tail being barred, the estate determines on their failure.

**Base-infestment**, **Base-rights** (Sc.), a disposition of lands by a vassal or mesne lord, to be held of himself.

**Basilica**, a body of law, framed A.D. 880.

**Bastard**, one born out of wedlock; (2) one born in wedlock who has been bastardized by legal sentence. He has no claim to succeed to property of his parents, nor to the name of either.

**Bastard-eigné**. If a man have a natural son, and afterwards marry the mother, and by her have a legitimate son, the latter is called *mulier puisné*, and the elder son *bastard eigne*.

**Bastardize**, to declare bastard, as a court does; (2) to give evidence in proof of bastardy. This a mother (married) may not do.

**Baths and Washhouses**. Certain Acts, *e.g.*, 9 & 10 Vict. c. 74, 10 & 11 Vict. c. 61, and 45 & 46 Vict. c. 30, have been passed to encourage their establishment in towns.

**Battel**, **Wager of**, a form of trial by combat anciently used in military, and certain criminal, cases.

**Battels**, an allowance of provisions.

**Battery**, beating and wounding. To beat, in the legal acceptation of the term, means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold, however trifling, of another's person or clothes, in an angry, insolent, or hostile manner.

**Battlings**, an allowance of money.

**Bear** (Stock Exchange), one who speculates for a fall in prices.

**Bearer**, when the benefit of a security, *e.g.*, a cheque, can be claimed by any person who presents it, it is said to be "payable to bearer"; (2) see *Maintenance*.

**Beasts**, *of chase* [*feræ campestres*], are the buck, doe, fox, marten, and roe; *of the forest* are the hart, hind, hare, boar, and wolf, which are also called beasts *of venary*; *of the warren* are the hare and coney.

**Beau-pleader** (*to plead fairly*), the name of an obsolete writ founded on the statute of Marlbridge (52 Hen. III. c. 11).

**Bederepe**, or **Biderepe**, a service which certain tenants were anciently bound to perform; as to reap their landlord's corn.

**Bedford Level**, a fenny tract in the counties of Norfolk, Suffolk, Cambridge, Huntingdon, Northampton, and Lincoln, drained by the Earl of Bedford in 1649. By 15 Car. II. c. 17, conveyances of these lands must be registered.

**Beerhouse**, one where beer is sold to be drunk either *on* or *off* the premises; **Beershop** *off* the premises only.

**Begin, Right to.** This right rests with the party on whom is the onus of proving the affirmative.

**Bench**, or **Banc**, a tribunal of justice; (2) the judges, as distinguished from the Bar.

**Benchers**, seniors in the Inns of Court, intrusted with their government or direction.

**Bench warrant**, an attachment issued by order of a criminal court against an individual for contempt, or for the purpose of arresting a person accused. It may also be signed and issued by a judge or by two justices of the peace.

**Benefice**, an ecclesiastical living, usually parochial.

**Beneficiary**, he that is in possession of a benefice; also a *cestui que trust* (*q. v.*).

**Beneficio primo ecclesiastico habendo**, an ancient writ, which was addressed by the king to the Lord Chancellor, to bestow the benefice that should *first* fall in the royal gift, above or under a specified value, upon a person named therein.

**Beneficium abstinendi** (Roman law), the power of an heir to abstain from accepting the inheritance.

**Beneficium cedendarum actionum** (Roman law), the privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them.

**Beneficium competentiæ** (Roman law), a right of certain persons, *e.g.*, partners, not to be condemned beyond such an

amount as they could pay without depriving themselves of the necessaries of life.

**Beneficium divisionis** (Roman law), the right of a surety to contribute only rateably with the other sureties.

**Beneficium inventarii** (Roman law), the privilege which an heir had, by having an inventory taken of the testator's property before he entered into possession of it, to protect himself from liability beyond the amount of the property inventoried.

**Beneficium ordinis, excussionis, or discussionis** (Roman law, *Benefit of discussion*, &c.), a privilege by which a creditor, called in Scotch law a *cavetor*, could call on the credit of the principal debtor first, and only to sue the sureties for that which he could not recover from the principal. This privilege is taken away by 19 & 20 Vict. c. 60.

**Beneficium separationis** (Roman law), the privilege sometimes granted to creditors, of having the goods of the heir separated from those of the testator; e.g., if the heir is insolvent.

**Benefit Building Societies**, exist chiefly among the industrial classes for the purpose of raising, by small periodic subscriptions among the members, a fund to assist members in the purchase or lease of land.

**Benefit of Clergy**, a privilege originally granted to the clergy, and subsequently extended to all persons who recited the creed; whereby they were exempted from trial by the civil courts in criminal cases. Finally abolished by 7 Geo. IV. c. 28. See *Antrefois couerct*.

**Benerth**, an ancient service by agricultural tenants.

**Benevolence**, was nominally a voluntary gratuity paid by subjects to the sovereign, but came to be a forced tax. By the Petition of Right, 3 Car. I., it was declared to be leviable for the future only with the consent of the House of Commons. See also 1 W. & M. c. 2; *Aids*.

**Benevolent, or Friendly, Societies** are those which provide by the subscriptions of their members for the maintenance or relief of the members and their families in sickness or old age. They must be registered under the Friendly Societies Acts to acquire a legal status.

*Benignè facienda sunt interpretationes, propter simplici laicorum, ut res magis valeat quam pereat; et verba intentionis non è contra, debent inservire.* [(In construing written instruments) some latitude of interpretation must be allowed]

account of the want of technical knowledge in the general public, so that the instrument may rather be upheld than come to nought; and words must give way to the intention, not govern it.)] It should, however, be borne in mind, in applying this maxim, that the *intention* is not to be gathered from anything *outside* the instrument.

**Bequeath**, to make a *bequest*, or gift of personal property by will. See *Legacy*.

**Berbiage**, a rent paid for the depasturing of sheep.

**Bercaria**, a sheep-fold, or other enclosure to keep sheep.

**Berghmote**, a court held in Derbyshire for the miners.

See *Barmote*

**Beria**, **Berie**, or **Berry**, a large open field.

**Bersa**, a limit or bound.

**Bersare**, to shoot or hunt.

**Bestiality**, carnal intercourse with the lower animals.

**Betaches**, laymen using glebe lands.

**Better equity**. See *Equity*.

**Betting**, in public places. See 30 & 31 Vict. c. 134, s. 23, and 31 & 32 Vict. c. 52, s. 3. A stool or umbrella on or under which a person stands to bet is a "place for betting" within 16 & 17 Vict. c. 119.

**Beverches**, bed works, or customary services done at the bidding of the lord by his inferior tenants.

**Beyond seas**. See *Absence*.

**Bid**, an offer of a price for anything which is being sold by auction. It may be retracted before acceptance, even though there be a condition prohibiting this. See *Puffer*.

**Bigamy**, the felonious offence of a husband or wife marrying again during the lifetime of his or her former wife or husband.

**Bilanciis deferendis**, an obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh wool licensed for transportation.

**Bilateral contract**, a contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other.

**Bilboes**, a punishment at sea answering to the stocks.

**Bilinguis**, one who uses two languages. See *Jury de medietate linguae*.

**Bill**, the original draft submitted to Parliament, which when passed becomes a statute (*q. v.*); (2) *Bill in Chancery*, or *Equity*, a printed or written statement of a plaintiff's case, forming the ground of his application to the Court and of a claim for relief. Since the Judicature Act, 1875, its

place has been taken by the *Statement of Claim*, and every action is commenced by writ of summons. Bills were (*a*) *original*, *i.e.*, initiating proceedings; or (*b*) *not original*, or *secondary*, *e.g.*, *supplemental* bills, and bills of *review*, *revivor*, etc. (*q. v.*). Bills were also divisible into those which prayed relief and those which did not; *e.g.*, bills for *perpetuation of testimony* (*q. v.*).

**Bill Chamber** (*Sc.*), a department of the Court of Session.

**Bill in Criminal Cases**, an indictment presented to a grand jury. According as they consider it well founded or otherwise, they endorse it "a true bill," or "not a true bill," "not found."

**Bill of Adventure.** See *Adventure*.

**Bill of Appeal** of felony. See *Battel*.

**Bill of Attainder**, a bill declaring persons attainted and their property confiscated. See *Attainder*.

**Bill of Complaint.** Same as *Bill* (2).

**Bill of Conformity**, a bill filed by an executor or administrator, when the affairs of the deceased were so much involved that he could not safely administer the estate, except under the direction of the Court of Chancery.

**Bill of Costs**, an account of the charges and disbursement of solicitor, incurred in the conduct of his client's business. It must be delivered, signed, to the client, one *calendar* month before an action can be brought to recover the amount thereof, in order to give the client an opportunity of taxing it. Conveyancing costs are taxable. An executor or administrator of a solicitor must also deliver a bill of costs, signed, before he can sue upon it.

**Bill of Credit.** See *Letter*.

**Bill of Debt**, or **Bill Obligatory**, an acknowledgment in writing of debt, specifying the amount and the date and place of payment.

**Bill of Entry**, an account of the goods entered at the custom house, both inwards and outwards, and specifying (*inter alia*) the name of the merchant and the nature of the goods.

**Bill of Exceptions.** If, prior to the Judicature Act, 1875, Ord. LVIII., a judge misdirected the jury, or otherwise mistook the law, he was required by the counsel of the party aggrieved to sign a *bill of exceptions*, *i.e.*, a document containing the objections raised to his ruling, so that the point might be settled by a Court of Error. The present mode of proceeding is by motion for a new trial.

**Bill of Exchange**, an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer. The law on this subject has been codified by 45 & 46 Vict. c. 61. See *Acceptance, Accommodation, Days of Grace, Indorsement, Dishonour, Protest, Equity, Set.*

**Bill of Health**, a document delivered by the consul to a ship's master on clearing out from a port, certifying the sanitary condition of the place. It may be *clean, suspected, (touched), or foul.*

**Bill of Indemnity**, an Act of Parliament, passed every session, until 1869, for the relief of those who had unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices. See 31 & 32 Vict. c. 72, s. 16.

**Bill of Lading**, a memorandum signed by masters of ships, in their capacity of carriers, acknowledging the receipt of merchants' goods; it is usually in three parts, of which one is kept by the consignor, one is given to the master, and the third is sent to the consignee. It specifies the name of the ship and master, the destination of the ship, the goods, the consignee, and the rate of freight.

**Bill of Middlesex**, a fictitious mode of giving the Court of Queen's Bench jurisdiction in personal actions, by arresting a defendant for a supposed trespass. Abolished by 2 Wm. IV. c. 39.

**Bill of Pains and Penalties**, a special act of the legislature, whereby any punishment, less than death, may be inflicted upon persons supposed to be guilty of treason or felony, without any conviction in the ordinary course of judicial proceedings.

**Bill of Parcels**, the account between seller and buyer.

**Bill of Particulars**, a statement of a plaintiff's cause of action, or of a defendant's set-off.

**Bill of Peace**. See *Peace*.

**Bill of Proof**, proceedings by one who claims to be the real owner of goods sought to be attached, to establish his title.

**Bill of Review**, one filed to obtain a reversal of a decree in Chancery, duly signed and enrolled. *A bill in the nature of a bill of review* was filed where the decree had not been enrolled. If, however, no other evidence was tendered, the re-hearing was usually on petition. *A supplemental bill in*

*the nature of a bill of review* prayed that the cause might be heard with respect to new matter made the subject of the supplemental bill, at the same time that it was re-heard upon the original bill. All three bills are, since the Judicature Act, replaced by the procedure on Appeal (*q. v.*).

**Bill of Revivor**, one filed to revive an abated suit. Now abolished.

**Bill of Rights**, a declaration delivered by the Lords and Commons to the Prince and Princess of Orange, 13th February, 1689, and afterwards enacted in Parliament, when they became king and queen, declaring illegal certain acts of the late king.

**Bill of Sale**, an assignment by deed of chattels-personal. It may be (*a*) absolute, (*b*) by way of mortgage. If absolute, it must be accompanied by transfer of possession to the grantee, since the continuance of the assigned chattels in the possession of the grantor gives rise to a presumption of fraud. If by way of mortgage, which is the more general case, a bill of sale must be attested and registered within seven days, and re-registered every five years, 29 & 30 Vict. c. 96, and must set forth the consideration for which it is given; otherwise it is void. The Bills of Sale Act, 1882, amending that of 1878, prescribes a form of bill of sale by way of mortgage, and makes void all bills (*b*) not made in accordance with it, or given in consideration of a sum less than £30. See 45 & 46 Vict. c. 43; 53 & 54 Vict. c. 53; 54 & 55 Vict. c. 35.  
(3) The method of transferring a ship.

**Bill of Sight**, an imperfect and preliminary *bill of entry* (*q. v.*), describing goods to the best of the merchant's belief.

**Bill of Store**, a certificate that certain goods have been exported.

**Bill of Sufferance**, a licence granted to a merchant to trade from one English port to another, without paying custom.

**Billa vera**, a true bill. See *Grand Jury, Ignoramus*.

**Billet**, a soldier's quarters in a civilian's house, as to the regulations concerning which see the *Mutiny Acts*.

**Bills of Mortality**, returns of death in the metropolis, made before the institution of the present system of registration. See *Burial*.

**Bipartite**, of two parts.

**Birds**. Domestic fowls, tame pigeons, and pheasants are subjects of larceny. Certain wild birds are protected by statute during their breeding season. See *Game*.

**Birretum**, the cap or coif of a judge or serjeant-at-law.

**Birth.** See *Registration*. Concealing birth is a misdemeanor.

**Bi-scot**, a fine of 2*s.* for not repairing banks, ditches, etc.

*Bis dat qui cito dat.* (He gives double who gives promptly.)

**Bishop**, an ecclesiastical dignitary nominated by the Crown; chief of the clergy within his diocese. *Suffragan* bishop, one who acts for an absent bishop. See *Congé d'Elire*.

**Bishop's Court**, an ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and if the diocese be large, he has his commissaries in remote parts, who hold *consistory courts*, for matters limited to them by their commission.

**Bissextile**, leap year, which happens every fourth year, and contains 366 days. The extra day was by Julius Caesar appointed to be the day before the 24th of February, which was the sixth before the Kalends, so that the intercalated day was called the double sextile, or *bis-sextilis*. It is now the 29th of February.

**Black Rod, Gentleman Usher of**, an officer who during the session of Parliament attends on the peers, and to whose custody all peers impeached for any crime or contempt are first committed.

**Black-ward**, a sub-vassal.

**Blanch-holding** (Sc.), an ancient tenure, the duty payable being nominal, as a penny or a peppercorn, if required.

**Blank Acceptance**, an acceptance written on the paper before the bill is made, and delivered by the acceptor, and which will charge the acceptor to any extent warranted by the stamp.

**Blank Bar**, common bar, a plea in bar, which, in an action of trespass, was resorted to to compel the plaintiff to *assign*, or name, the place where a trespass was committed.

**Blank Indorsement**, is one where the name of the indorser, and not of the indorsee, is written on an instrument.

**Blanks**, a kind of white money (value 8*d.*) coined by Henry V. in those parts of France which were then subject to England; forbidden to be current in this realm by 2 Hen. VI. c. 9.

**Blasphemy**, the offence of speaking against God, Jesus Christ, the Bible, or the Book of Common Prayer, with intent to excite contempt against the Established Religion, or to promote immorality.

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**Blended Fund**, the aggregate proceeds of the sale of real and personal estate: *e.g.*, of a testator.

**Blockade** (generally used of a port), is the maintenance of vessels of war outside a port so as to prevent the ingress or egress of ships. Vessels attempting to pass it are liable to confiscation.

**Blood**, that quality or relationship which enables a person to succeed to another by descent. See *Attainer*. The *whole* blood is where persons have the same parents or ancestors; the *half* blood is where (*e.g.*) they have the same father but different mothers. The difference between these two relationships in the matter of inheritance was abolished by 3 & 4 Wm. IV. c. 106.

**Bloodwit** (Sc.), an amercement for bloodshed, a customary fine.

**Boc**, a charter.

**Bock-hord**, or **Book-hoard**, a place where books, documentary evidence, or writings are kept.

**Bock-land**, **Boc-land**, or **Book-land**, also called charter-land or deed-land, was, under the Saxon system, land held by deed under certain rents and services, and in effect differed in no respect from free-socage lands. See *Pole*.

**Body**, the main part of any instrument; in *deeds* it is spoken of as distinguished from the recitals and introductory parts and from the signatures; in *affidavits*, from the title, and jurat. (2) In writs it is used of the person who is to be apprehended. (3) *Body politic*, a corporation, a State.

**Bona**. This term, according to the Roman law, includes all sorts of property, movable and immovable.

**Bonâ fide**, *with good faith*, i.e., without fraud or unfair dealing, whether it consists in simulation or dissimulation. A *bonâ-fide holder* of a security generally means one who has no notice of any defect attaching to it.

**Bona forisfacta** (Roman law), goods forfeited to the fiscus, or treasury; also called *Bona confiscata*.

**Bona notabilia**, *notable goods*, i.e., goods sufficient in amount to require, under the ecclesiastical law, probate or administration to be taken out. They were fixed by the 93rd canon (excepting in London, where the sum is £10) to be legal personal estate to the value of £5 or upwards. See *Probate*.

**Bona patria**, an assize of countrymen or good neighbours; sometimes called *assiza bona*.

**Bona vacantia**. See *Waif*.

**Bona waviata**, (1) (Roman law), property of an intestate. (2) Goods thrown away by a thief in his flight for fear of being apprehended. They are given to the Crown by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him; but if the owner prosecutes the thief to conviction the goods are restored. (3) Waifs (*q. v.*).

**Bond**, a written acknowledgment of a debt or contract to pay, under seal. If this be all, it is called a *simple* or *single*-bond. If a condition be added that the bond shall be void when the *obligor*, or giver of it, shall have performed an act specified, it is called *double* or *conditional*. The person to whom the undertaking is given is the *obligee*. See *Bail*, *Bottomry*, *Post Obit*, *Replevin*. (2) An instrument of indebtedness issued by governments and companies.

**Bond of Corroboration** (Sc.), an additional obligation granted by the obligor of a bond to the obligee or his representative, whereby he corroborates (confirms or strengthens) the original bond.

**Bond-creditor**, a creditor whose debt is secured by a bond.

**Bondsman**, a surety.

**Bond-tenants**, copyholders and customary tenants.

*Boni judicis est ampliare jurisdictionem*.—(It is the duty of a good judge to enlarge his jurisdiction, *i.e.*, “to amplify the remedies of the law, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice.”)

*Boni judicis est causas litium dirimere et interest reipublicæ ut sit finis litium*.—(It is the duty of a good judge to prevent litigation; and it is for the benefit of the State that there should be an end of law suits.)

**Bonis asportatis** (*Writ De*), a writ of trespass for the wrongful taking of chattels.

**Bonis non amovendis** (that the goods be not removed), a writ addressed to the sheriff, where error was brought, commanding that the person against whom judgment is obtained be not suffered to remove his goods, till the error be tried and determined. (2) See *Administration de bonis non*.

**Bonitarian right**, the right of possession.

**Bono et malo** (*Writ De*), a special writ of gaol delivery, which issued for every prisoner. Now abolished.

**Bonus**, premium or advantage. (2) An occasional extra dividend given by a company to its shareholders.

**Book of Common Prayer.** See *Act of Uniformity*.

**Book of Responses** (Sc.), an account of all non-entry and relief duties payable by heirs who take precepts from Chancery.

**Booty of War**, property captured by an army: it belongs by right to the Crown, but is usually granted to the captors, whose claims to it are decided by the Admiralty Division of the High Court. See *Capture*.

**Bord-brigch**, a breach or violation of suretyship, pledge-breach, or breach of mutual fidelity.

**Border Warrant**, a process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security to abide trial (*judicio sisti*).

**Borough**, a town that sends a burgess or burgesses to Parliament; also called a *Parliamentary Borough*. (2) A borough corporate. See *Municipal Corporation*. (3) See

**Borough Courts**, local borough tribunals, held by prescription, charter, or Act of Parliament. They are Courts of Record, and usually the Recorder of the borough is the judge.

**Borough-English**, or **Postremo-geniture**, a custom of Saxon origin, occasionally met with in burgage tenemental lands, whereby if a person have many sons and die intestate, the youngest son inherits all the realty which belonged to his father, situated within such borough.

**Borough Fund**, the revenues of a municipal borough derived from the rents and produce of the land, etc., belonging to it in its corporate capacity, and supplemented if necessary by a borough rate. See 45 & 46 Vict. c. 50, s. 138, etc.

**Borough Sessions**, courts established in boroughs under the Municipal Corporations Act (45 & 46 Vict. c. 50), and held by the Recorder once a quarter or oftener.

**Bote**, an obsolete term, signifying necessaries for house-keeping, or husbandry; e.g., *house bote*, firewood; *plough bote*, wood for repairing instruments of husbandry. (2) Reparation for injury; e.g., *man bote*, for homicide. See *Estovers*.

**Bottom**, a valley; (2) a ship.

**Bottomry**, or **Bummaree**, a species of mortgage or hypothecation of a ship, by which she and her freight or cargo are

**pledged** as a security for the repayment of a sum of money. If the ship be totally lost, the lender loses his money; but if she return safely, he recovers his principal, together with the interest agreed upon, which is at a high rate corresponding to the risk. The contract may be by deed-poll, which is called a *bottomry bill*, or by bond, called a *bottomry bond*. See *Respondentia*.

**Bough**, of a tree, was given formerly as a symbol of seisin.

**Bought and sold notes**, documents delivered by a broker to his principals on the conclusion of a sale of stock, etc., containing particulars of the transaction.

**Bound or Boundary**, the limit or dividing line of two pieces of land. See *Abuttal*, and 31 & 32 Vict. c. 46, c. 48, and c. 49.

**Bounty**, a premium given by a government to manufacturers and others to encourage particular industries.

**Bovill's Act**. See *Partnership*. (2) 23 & 24 Vict. c. 34, dealing with Petitions of Right (*q. v.*).

**Box-days**, days appointed by the Scotch Court of Session for the lodging of necessary papers during vacation.

**Bracton**, the author of the treatise entitled *De Legibus et Consuetudinibus Anglie*, written temp. Henry III.

**Brawling**, the offence of quarrelling or creating a disturbance in the church or churchyard.

**Breach**, a breaking, is either the invasion of a right or the violation of a duty. It may be *actual* or *constructive*. To *assign* breaches, in an action, is to specify them in the pleadings.

**Breach of close**, an unwarrantable entry on another's land. See *Trespass*.

**Breach of covenant**, a violation of an agreement contained in a deed either to do or not to do some act; it is a civil injury.

**Breach of peace**, an offence against the public, which may be either *actual*, *constructive*, by tending to make others break it, or *apprehended*.

**Breach of pound**, the breaking any pound or place where cattle or goods distrained are deposited, to rescue such distress.

**Breach of prison**, an escape by a prisoner lawfully in prison.

**Breach of promise of marriage**, a violation of a promise to marry, which gives rise to an action of damages, unless

the breach was justifiable, *e.g.*, on the ground of want of chastity.

**Breach of trust**, a violation of duty by a trustee. Since 1857 this is a misdemeanor.

**Breaking bulk**, making use of an article; this prevents a buyer from objecting to it and returning it to the seller.

**Breaking of arrestment** (*Sc.*), is the contempt of the law committed by an arrestee who disregards the arrestment used in his hands, and pays the sum or delivers the goods arrested to the debtor. See *Arrestment*.

**Breed-bate**, a barrister. See *Barratry*.

**Brehon Law**, a traditional and customary law, formerly in force in Ireland. Abolished by 40 Edw. III.

**Bretoise**, the law of the Welsh Marches, observed by the ancient Britons.

**Breve**, a writ.

**Brevet**, a commission conferring on an officer in the army a rank immediately above that which he holds in his own regiment, without, however, giving him increased pay.

**Brevia magistralia**, official writs framed by the Clerks in Chancery to meet new injuries, to which the old forms of action were inapplicable. See *Trespass on the Case*.

**Brevia testata**, short attested memoranda, originally introduced to obviate the uncertainty arising from parol feoffments; hence modern conveyances have gradually arisen.

**Brevibus et rotulis liberandis**, a writ to a sheriff to deliver to his successor the county, and appurtenances, with the rolls, briefs, and all other things belonging to his office.

**Bribery**, the offence of influencing by gift or reward a person in the exercise of a judicial or public duty. The law against bribery was extended to Municipal Elections by 45 & 46 Vict. c. 50, s. 77. By the Corrupt and Illegal Practices Prevention Act, 1883, c. 51, the law against bribery, at parliamentary election, shas been made much more stringent; certain practices, viz., treating, undue influence, bribery, and personation being defined as "corrupt," and certain others, such as the hiring of conveyances for voters, as "illegal"; and the expenses of candidates being restricted by a scale varying with the number of electors on the register.

**Bridewell**, a house of correction.

**Brief**, an abbreviated statement of the pleadings, proofs, and affidavits in any legal proceeding, with a concise narrative of the facts and merits of the plaintiff's case, or the defendant's defence, for the instruction of counsel at the

trial or hearing. *Hand-brief*, was one indorsed by counsel, upon which orders of course (*q. v.*) were obtained. (2) A writ. (3) A letter.

**Brief al'evesque**, a writ to the bishop by which, in *quare impedit*, an incumbent was removed unless he recovered judgment, or was presented *pendente lite*.

**Brief out of Chancery**, a writ issued in Scotland.

**Bristol bargain**, is where, *e.g.*, A lends B £1,000 on good security, and it is agreed that £500, together with interest, shall be paid at a time stated; and that B should further pay to A £100 *per annum* for seven years.

**Britton**, a work on English law, written *temp.* Edward I., of uncertain authorship, and founded on Bracton and Fleta.

**Brocage**, or **Brokerage**, the wage or commission of a broker. See *Marriage*.

**Brocards**, law maxims.

**Broker**, an agent employed to make contracts in matters of trade, and to find persons who may be willing to enter into such contracts. He is paid by a commission of *brokerage*. See *Ship, Stock, Insurance, Factor*.

**Building Lease**, a lease of land for a long term of years, the lessee covenanting to build thereon.

**Building Society**. See *Benefit*.

**Bull** (Stock Exchange), one who speculates for a rise in the market.

**Bum-bailiff** (*Bound-bailiff*). See *Bailiff*.

**Burden of proof**. A prominent canon of evidence is that the point in issue is to be proved by the party who asserts the affirmative, according to the maxims, *Ei incumbit probatio qui dicit, non qui negat*, and *Affirmanti non neganti incumbit probatio*. The burden of proof, or *onus probandi*, is said to be *shifted*, when a person has adduced sufficient evidence to raise a presumption that what he alleges is true. See *Evidence, Proof*.

**Burgage-holding** (*Sc.*), one by which lands in royal boroughs in Scotland are held of the sovereign.

**Burgage-tenure**, one whereby houses and lands in ancient boroughs are held of the lord. Some of these boroughs have been disfranchised, and continue such only in name and by virtue of their ancient customs. See *Bo*

**Burgess**, an inhabitant of a borough. (2) A representative of a borough in Parliament. (3) Under the Municipal

Corporations Act, one who is entitled to vote on the election of the "council."

**Burgh** (Sc.), equivalent to the English "borough."

**Burgh-bote.** See *Bote*.

**Burglary**, a breaking and entering by night into or out of a dwelling-house with intent to commit a felony. *Breaking*, in the eye of the law, includes entering a house by fraud, threats, or collusion. "Night" here means the interval between 9 p.m. and 6 a.m.

**Burial.** By the common law everyone, not within certain ecclesiastical prohibitions (*e.g.*, being unbaptised), is entitled to be buried in the churchyard of the parish where he dies; but not within the church without leave of the incumbent, except by prescriptive right. Under the Burial Acts, burial boards are appointed to provide additional graveyards where necessary. See *Registration*.

**Butlerage.** See *Prisage*.

**By-laws**, or **Bye-laws**, the laws, regulations, and constitutions made under the authority of Parliament, by companies, corporations, etc., for the government of their members, the management of their business, and the like.

## C.

**C**, inscribed upon a ballot in the Roman Courts of Judicature, stood for *condemno*.

**C. I. F.** A price quoted "c. i. f." at a certain place includes cost, insurance, and freight.

**C. L. P. A.**, The Common Law Procedure Acts, 1852, 1854, and 1860.

**Ca. Sa.** *Capias ad satisfaciendum* (*q. v.*).

**Cachet**, **Lettres de**, letters issued and signed by the kings of France, and counter-signed by a secretary of state, authorizing the imprisonment of a person.

**Cadit quæstio**, "the argument is at end."

**Caduca** (Roman law), the lapse of a testamentary disposition.

**Caducial clause** (Sc.), that by which settled property is made to revert to the settlor or his heirs.

**Cæsarian operation.** When a child is saved by this after the mother's death, the husband cannot take as tenant by the courtesy.

**Cairns' Act (Lord)**, 21 & 22 Vict. c. 27, enables the

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Court of Chancery to award damages in cases of specific performances, etc.

**Calendar**, see *Month*. (2) The list of prisoners at assizes.

**Call**, a demand for money by a company from its shareholders. (2) The election of students to the degree of barrister. (3) See *Option*.

**Calling the Jury**, successively drawing out of a box the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn. The twelve whose names are first called, and who appear, are sworn as the jury, in the absence of some just cause of challenge or excuse.

**Calling the plaintiff**. The old method of *non-suiting* (*q. v.*) a plaintiff.

**Calling upon a prisoner**. See *Allocutus*.

**Calumnia** (Roman law), malicious prosecution.

**Calumny (Oath of)** (Sc.), an oath formerly taken by both parties to an action that the facts alleged by them were true. Since 1715 it has fallen into disuse, except in consistorial actions, *i.e.*, matrimonial causes.

**Calvin's case** (7 Rep. 1), decided that persons born in Scotland after the accession of James I. to the Crown of England were natural-born English subjects.

**Camera**, the judge's private room behind the Court. Cases are sometimes heard there by him, especially in divorce matters.

**Camera stellata**, the Star Chamber, a court originally created to prevent the obstruction of justice in the inferior courts by undue influence. It consisted of the Privy Council, the common law judges, and peers of Parliament. Its authority was enlarged and confirmed by *Rot. Parl.* 3 Hen. VII. n. 17, fell subsequently into abuse, and was abolished in the reign of Charles I.

**Campbell's Act**, 9 & 10 Vict. c. 93, whereby (as amended by 27 & 28 Vict. c. 115) a right of action is given to certain relatives of a person whose death has been caused by a wrongful act, against the person who committed such act.

**Cancellation**, an invalidation or revocation of an instrument by lines drawn across it (*cancelli*). A deed is usually cancelled by striking out the signatures and tearing off the seal.

**Cancelli** (*lattice-work*), the rails enclosing the bar of a court of justice or the communion-table. See *Cancellation*.

**Candlemas day**, the 2nd of February. It is the fourth

of the four half or *cross* quarter-days of the year (used in Scotland as quarter-days), the others being Whitsunday (fixed on May 15), Lammas, and Martinmas.

**Canon**, in ecclesiastical law, a rule of the *jus canonicum* contained in the *Decretum Gratiani*. (2) A rule of ecclesiastical conduct promulgated by Convocation. (3) In civil law, a rule; e.g., the canons of inheritance. (4) A member of a chapter.

**Canon law**, a body of Roman ecclesiastical law first codified by Gratianus in 1139 (see *Decretum Gratiani*). This and five subsequent collections form the *Corpus Juris Canonici*. In England the Canon law (or *Canons of the Church*) consists of certain ecclesiastical laws, or constitutions, which were ratified after the Reformation by 25 Hen. VIII. c. 19, so far as they are not repugnant to the law of the land. They were revised in 1603, and again in 1865.

**Canons of inheritance**, the rules directing the descent of real property in cases of intestacy. See 3 & 4 Wm. IV. c. 106.

**Cantred**, or **Kantress**, a hundred villages (Welsh term).

**Cap of maintenance**, one of the regalia or ornaments of the sovereign: also used by some provincial mayors.

**Capacity**, the power to alter one's legal position, e.g., by alienating property, committing crime, etc. This a lunatic has not, and infants and married women only in a modified degree. As to married women, however, see 45 & 46 Vict. c.

**Cape**, a judicial writ touching a plea of lands or tenements, divided into *cape magnum*, or the *grand cape*, which lay, before appearance, to summon the tenant to answer the default and also over to the demandment; the *cape ad valentiam*, which was a species of grand cape; and the *cape petitum*, or *petit cape*, after appearance or view granted, summoning the tenant to answer the default only.

**Capias** (*that you take*), a generic name for writs (usually addressed to the sheriff), ordering the person to whom they are addressed to arrest a person therein named. See *Mesne Process*, and the following heads.

**Capias ad audiendum judicium**, a writ issued in case the defendant be found guilty of a misdemeanor (the trial of which may, and does usually, happen in his absence, after he has once appeared), to bring him up to the Court to receive sentence: if he abscond, he may be prosecuted to outlawry.

**Capias ad respondendum**, a writ issued for the arrest of

a person against whom an indictment for misdemeanor has been found, in order that he may be arraigned. (2) Under the old practice, it issued against an absconding debtor, who was then made to give special bail.

**Capias ad satisfaciendum**, or *ca. sa.*, a writ whereby a defendant in a civil action, when judgment has been recovered against him for a sum of money, is arrested and held in prison until payment is made. By the Debtors Act, 1869, imprisonment for debt was abolished except in a few cases specified.

**Capias extendi facias**, a writ issuable against a debtor to the Crown (*q. v.*). Obsolete. See *Extent*.

**Capias in withernam** (Anglo-Saxon, *a taking again*). If the goods before or during an action of replevin had been eloigned (*i.e.*, removed or concealed, see *Elongata*), so that the sheriff could not replevy them, then, upon plaint being levied in the County Court by the plaintiff, this writ was issued directing the sheriff to take other goods instead of those eloigned. Now obsolete. See *Replevin*. This writ could also be sued out by a defendant who had obtained judgment in replevin against the plaintiff.

**Capias pro fine**, or **Misericordia**. Formerly if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but if the verdict was for the plaintiff, then in all actions *ri et armis*, or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine*; in all other cases, the defendant was adjudged to be amerced.

**Capias utlagatum** (*seize the outlaw*). This writ is either *general*, against the person only; or *special*, against the person, lands, and goods. Outlawry having been abolished in civil cases, this writ is rarely issued.

**Capita** (*heads*). Distribution of personality *per capita* happens when all the claimants claim in their own right, as kindred in the same degree; this being opposed to a claim *per stirpes* (*q. v.*), as representing another person whose right or share they claim. (2) Boundaries.

**Capital felonies**, those crimes upon conviction of which the offender is condemned to be hanged. The crimes now punishable with death are high treason and murder.

**Caption**, that part of a legal instrument or record, *e.g.*, a commission or indictment, which shows where, when, and by what authority it is taken, found, or executed.

**Capitation tax, grant, etc.**, is one raised or made accord-

ing to the *heads*, i.e., from or for each one of a school, etc.

**Capite, Tenure in**, the holding of land direct from sovereign.

**Capitulary**, a code of laws.

**Capture**, is in some cases, e.g., that of *animals fera* (*q. v.*), a mode of acquiring property. (2) Seizure of property of an enemy. See *Booty, Prize, Reprisals*. (3) at sea can only be lawfully made by persons holding commission from their government. See *Piracy*. *Actual* are the crew of the ship to which the prize strikes it *constructive*, those belonging to ships that assisted, or *in hand*.

**Carcel-age**, prison-fees.

**Caroome**, a licence by the Lord Mayor of London to a cart.

**Carrier**, one who receives goods for hire to convey one place to another. If he does so as his regular business he is a *common carrier*; if by special contract, a bailee. *Bailment*. A *common carrier* is bound to carry the goods for anyone who offers to pay his hire, and is liable for injury to them. This liability is, however, restricted by *Carriers Acts* of 1831 and 1865.

**Cartel**, or **Chartel**, an agreement to exchange prizes. (2) A written challenge. *Cartel-ship*, one in which the prizes are conveyed to be exchanged.

**Carucate**, or **Carve**, of land, a plough-land of 60 acres.

**Case**, an abbreviation for *Trespass on the Case* (1) A statement of facts for counsel's opinion. (3) In the practice of Lords and Privy Council it takes the place of pleadings. (4) A written statement of the facts by an individual before a court, or by justices (see 20 & 21 Vict. c. 43), for the trial of a superior court. (5) See *Special Case*, and R. S. C. Ord. XXXIV.

**Cassetur Billa** (*let the bill be quashed*), an entry record that the plaintiff withdraws his bill. So in the common law practice, *cassetur breve*, which was equivalent to the modern notice of *discontinuance* (*q. v.*).

**Cast**, defeated at law, condemned in costs or damages.

**Castleward**, or **Castleyard**, a form of *Knights' fees* (*q. v.*).

**Casu Consimili**, **Casu proviso**, writs of entry now abolished.

**Casual ejector**, the fictitious *Richard Roe*, the nominal defendant, in the old action of ejectment (*q. v.*).

**Casual Pauper**, any destitute person receiving relief.

One who is not settled in the parish. See *Settlement*.

**Casus belli**, an occurrence giving rise to, or justifying,

**Casus foederis**, a case stipulated by treaty, or which comes within the terms of a compact.

**Casus omissus**, a point unprovided for by statute.

**Catalla, Catals**, chattels.

**Catching bargain**, one made with an expectant heir or pensioner, for inadequate consideration. See *Expectant heir*.

**Catchland**, land in Norfolk so called because it is uncertain to what parish it belongs, and the minister who first receives the tithes enjoys them for that year.

**Catchpole**, a sheriff's officer.

**Cats**, are not the subjects of larceny at common law, but made so with other "animals ordinarily kept in confinement" by 24 & 25 Vict. c. 96, s. 21.

**Cattle-gate**, common for one beast.

**Causa causans**, the immediate cause. See *Causa proxima*.

*causa sine qua non*, a concurrent cause.

**Causa mortis** (*in prospect of death*). See *Donatio*.

**Cause**, a suit or action; a criminal proceeding by the crown. In ecclesiastical law *plenary* causes are those in which the prescribed order of proceedings must be exactly adhered to; as opposed to *summary*.

**Cause of action**, a right to sue. See *Limitations*.

**Cause-list**, a printed roll of actions to be tried in the order of their entry.

**Caution, Cautionry** (Sc.), a species of bail; security.

Notice under the Land Transfer Act, 1875, etc., not to deal with land the subject of the notice without informing the person giving the notice.

**Cautioner** (Sc.), a surety.

**Caveat** (*let him take heed*), notice entered on the books of a Registry or Court to prevent a certain step being taken, e.g., probate of a will, without informing the *caveator*.

**Caveat emptor** (*let the purchaser beware*). Where the purchaser does not require a warranty, he, in most cases, has to take the risk of the article not being of the desired quality.

**Caveat viator** (*let the traveller beware*). This applies where gratuitous permission is given to persons to pass over

private land, who must take the risk of accident arising from negligence of the owner.

**Ceap**, a bargain, anything for sale.

**Cede**, to assign or transfer.

**Cedent** (Sc.), an assignor.

**Censure**, a custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay a poll-tax. (2) In ecclesiastical law, a spiritual punishment.

**Census**, a numbering of the population; now taken every ten years. The first was taken in 1801. The census papers now require (*inter alia*) particulars as to name, sex, age, birthplace, rank, and occupation.

**Central Criminal Court**, created in 1834 for the trial of offences committed in the metropolis and certain parts adjoining. See 4 & 5 Wm. IV. c. 36, *City of London Court*.

**Central Office of Supreme Court**, established by Judicature (Officers) Act, 1879, to consolidate the offices of the masters, etc., of the various divisions of the High Court.

**Cepi corpus et paratum habeo** (*I have taken the body and have it ready*), a return made by the sheriff upon an attachment, *capias*, etc., when he has the person, against whom the process was issued, in custody.

**Certainty**, definiteness of statement, which in criminal pleadings is (a) *to a certain intent in every particular*, where the Court presumes the negative of everything not affirmed, and *vice versa*; (b) *to a common intent*, where the presumption is in favour of the pleader; (c) *to a certain intent in general*, which is intermediate.

**Certificate**, a statement, usually in writing, given by a person having some official status, relative to some matter within his official knowledge or authority. See *Associate Chief Clerk*.

**Certification** (Sc.), notice to a party in a cause of the course that will be followed if he fails to appear, etc.

**Certified Copy**, one signed and certified as true by the official in whose custody the original is.

**Certiorari** (*to be more fully informed*), an original writ or action whereby a cause is removed from an inferior to a superior court for trial. The record of the proceedings is then transmitted to the superior court.

**Cert-money**, *quasi* certain money. Head-money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet. See *Court leet*.

*Certum est quod certum reddi potest.*—(That is certain which can be rendered certain.)

**Cess**, an assessment, or tax. In Ireland it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.

*Cessante causâ, cessat effectus.*—The cause ceasing, the effect ceases.)

*Cessante ratione legis, cessat ipsa lex.*—(The reason of the law ceasing, the law itself ceases.)

**Cessavit**, an action which lay when a man cessed, or ceased, to pay rent or perform services due for two years together. Now abolished.

**Cesser**, the coming to an end; e.g., of a term or annuity. (2) *Proriso for cesser*. Where terms for years are created by settlement, it is usual to introduce a proviso that they shall cease in case of—(a) the trusts never arising; (b) their becoming unnecessary or incapable of taking effect; (c) the completed performance of them. By 8 & 9 Vict. c. 112, every term ceases *ipso facto* when the trusts for which it was created are satisfied.

**Cesset executio**, a stay of execution in trials of co-defendants where the entire damages have been assessed against the first defendant found guilty, e.g., in actions of trespass.

**Cesset processus**, a stay of proceedings entered on the record.

**Cessio bonorum** (Roman law) (*a surrender of goods*), was the foundation of the modern law of bankruptcy. It operated, however, only as a discharge *pro tanto* of a man's debts, but exempted him from imprisonment. The Scotch and French laws conform in this matter to the leading outlines of the Roman law.

**Cessio in jure** (Roman law), a fictitious suit, in which one person claimed (*rindicabat*) the thing, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant.

**Cession**, a yielding up; e.g., of a benefice (ecclesiastical law).

**Cessionary** (Sc.), an assignee.

**Cessor**, a yielding up, ceasing or departing from. (2) One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law.

**Cestui que trust**, the person who possesses the equitable

or beneficial right to property, the legal estate of which is vested in a trustee. Also called a *beneficiary*.

**Cestui que use** (originally *cestui à que use*), previous to 27 Hen. VIII. c. 10, was equivalent to a *cestui que trust* (*q.v.*). That statute converted his equitable estate in land into a legal one. See *Statute of Uses*.

**Cestui que vie**, the person for whose life any lands, tenements, or hereditaments are held by another who is beneficially entitled to them. If any person entitled to such lands, etc., in remainder suspects that the *cestui que vie* is dead, he may call on the tenant in possession to produce him.

**Chaffwax**, an officer in Chancery; abolished 1852.

**Challenge**, an exception or objection. Challenge of jurors may be (i.) *to the array*, (ii.) *to the polls*; (i.) is an exception to the whole jury on account of partiality in the officer who arrayed the *panel*. It may be either (a) *principal*, or (b) *for favour*, the latter being founded on *probable* grounds only; (ii.) is an exception to any individual jurymen. It also may be (a) *principal*, or (b) *for favour*. Of (a) the chief heads are *propter defectum*, i.e., want of qualification; and *propter affectum*, i.e., bias in the jurymen. These are called *challenges for cause*: in trials for treason or felony fifteen *peremptory challenges* to a certain number of jurymen are allowed, no cause being assigned. The question raised by a challenge is forthwith tried and decided. See *Trior, Eligor, Jury*.

**Challenge to fight**, Sending or bearing a, is a misdemeanor punishable by fine and imprisonment.

**Chambers, Judges'**, are *quasi-private rooms*, in which the judges dispose of points of practice and other matters not sufficiently important to be heard and argued in Court.

**Chambers of the king** [*Regis Camera*], bays or portions of the sea cut off by lines drawn from one promontory to another.

**Champarty**, or **Champerty**, a bargain between a plaintiff or defendant in a suit and a third person, or *champertor*, *campum partiri*, i.e., to divide between them the land or other matter sued for, in the event of the litigant being successful in the suit, which is thenceforward carried on at the cost of the champertor. (2) The purchase of a right of action. Champerty is illegal. See *Maintenance*.

**Chancel**, that part of a church in which the communion table stands. The rector or lay impropriator is bound to repair it.

**Chancellor, Lord**, the highest judicial functionary in the kingdom, and superior in order of precedence to every temporal lord; (2) of a *diocese*, a law officer, who holds the bishop's court; (3) of the *Duchy of Lancaster*, has jurisdiction by himself or the vice-chancellor, his deputy, in matters of equity arising within the Duchy; (4) of the *Erchequer*; (5) of the *Order of the Garter*; (6) of the two *Universities*. See *Chancery*.

**Chance-medley**, homicide in self-defence, or by mis-adventure.

**Chancery**. The common law jurisdiction of the Court of Chancery was more ancient than the equitable, which was thus called its extraordinary jurisdiction. See *Petty Bag*, *Hanaper*. The Judicature Act merged the Court of Chancery in the Supreme Court as the Chancery Division of the High Court. The *Chancery Court of the Duchy of Lancaster* is a court of first instance presided over by a vice-chancellor, and having a local jurisdiction in equity. The appeal from it is to the Court of Appeal. There is also a *Chancery Court of York* for ecclesiastical matters within the province.

**Changer**, or **Chaunger**, an officer belonging to the Mint, who exchanges coin for bullion brought in.

**Changing of Solicitor**, in an action, could not prior to 1883 be effected without an order of a judge for that purpose. By the rules of May, 1883 (see also R. S. C. 1883, Ord. VII. r. 3), it may now be done upon notice of such change being filed in the central office, or district registry.

**Chapter**. See *Dean*.

**Charge**, a liability, (2) an accusation, (3) a judge's summing up, (4) a commission, (5) instructions to a grand jury, (6) a bishop's address to his clergy.

**Charge-sheet**, a paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser.

**Charging order**, one obtained from a court or judge charging the funds of a judgment debtor with the judgment debt.

**Charitable Trusts Acts**, were passed in 1853 and subsequent years, and constituted a board called Charity Commissioners to inquire into the management of endowed charities.

**Charitable Uses**. See *Mortmain*.

**Charity**, a gift for the benefit of the public or of some part thereof. See also 43 Eliz. c. 4, and 51 & 52 Vict. c. 52.

**Charta Chirographata** or **Communis**, an indenture.

**Charter**, an evidence by deed of things done between man and man ; (2) *Royal*, a grant by the Crown, letters patent granting privileges, creating corporations, etc.

**Charterer**, one who charters or hires a ship for a voyage or a certain period. This is done by a *charter-party* (divided charter), *i.e.*, an agreement in writing. See *Affreightment*, *Demurrage*. (2) A Cheshire freeholder.

**Charter-land**, that which is held by deed ; *cf. Bock-land*.

**Chase**, a privileged place for the preservation of wild beasts of chase, intermediate between a forest and a park.

**Chattels**, or **Catals**, goods movable and immovable, except such as are in the nature of freehold or parcel of it. Chattels are (i.) *personal*, *i.e.*, tangible or appertaining to the person ; (ii.) *real* (also called *chattel interests*), *i.e.*, interests in land which do not amount to a freehold : these are (*inter alia*) (a) *for years*, (b) *from year to year*, (c) *at will*, (d) *by sufferance*. See *Tenancy*.

**Cheat**, the generic term for the fraudulent obtaining of another's property by any deceitful practice not amounting to felony.

**Cheaters**. See *Escheaters*.

**Check-weigher**, one appointed, under the Coal Mines Regulation Act, 1887, by a majority of the miners to check the weight of the mineral gotten by them.

**Cheque**, an order addressed by a person to his banker directing him to pay on demand a certain sum to the person therein mentioned. The former is called the *drawer*, the latter the *payee*. The law of cheques has been codified by 45 & 46 Vict. c. 61.

**Chevage**, money formerly paid by way of poll-tax by tenants in villenage to their lord ; *cf. Ammohragium*.

**Chief, Tenants in**, persons who hold their lands immediately under the Crown (*in capite*).

**Chief-rents**, the annual payments of freeholders of manors ; also denominated quit-rents (*quieti redditus*).

**Chief Baron**, the presiding judge in the Court of Exchequer. See *Chief Justice of the Common Pleas*.

**Chief Clerks**, of judges in Chancery Division, are officials who transact the greater part of the work in the judge's chambers, including all inquiries and matters of routine.

**Chief Judge**, the judge of the London Bankruptcy Court. See the Bankruptcy Act, 1883, ss. 92-94.

**Chief Justice of England**, the presiding judge of the Queen's Bench Division of the High Court.

**Chief Justice of the Common Pleas**. The presiding judge of the Common Pleas Division. The office, with that of the Chief Baron, was abolished in 1881, and merged in that of the Chief Justice of England.

**Chievance**, usury.

**Chiltern Hundreds**. A member of the House of Commons cannot resign his seat. He may, however, become disqualified by acceptance of office of profit under the Crown. The office of Steward of the Chiltern Hundreds, which has only a nominal salary attached to it, is retained only for this purpose.

*Chirographum apud debitorem repertum presumitur*

— (A deed found with the debtor is presumed to be paid.)

**Chivalry**, Court of, an ancient court of honour.

**Chose**, a thing, used in divers senses. The most important are:—

(1) *Chose local*, a thing annexed to a place, as a mill, etc.

(2) *Chose transitory*, that which is movable, and may be taken away, or carried from place to place.

(3) *Chose in action*, otherwise called *chose in suspense*, a right to demand by action a debt or sum of money. See *Assignment, and Judicature Act, 1873*, s. 25 (6).

(4) *Chose in possession*, where a person has not only the right to enjoy, but also the actual enjoyment of, the thing.

**Churchesett**, corn paid to the Church.

**Church-rates**, those by which the expenses of a church are defrayed. Compulsory church-rates were abolished in 1868.

**Cinque ports**, the ports of Dover, Sandwich, Romney, Hastings, Hythe, Winchelsea, and Rye. The jurisdiction of the Lord Warden over them was abolished in 1855.

**Circuits**, divisions (now seven) of England and Wales, to each of which judges go from time to time to hold assizes. A *winter circuit* is occasionally appointed to be held between the Michaelmas and Hilary sittings. See *39 & 40 Vict. c. 57*.

**Circuit of Action**, is where more than one action is brought to effect what one would suffice for. The Judicature Act prevents this as much as possible.

**Circular note**. See *Letters of Credit*.

**Circumstantial evidence**, is evidence from which the fact in question is not directly proved, but is to be

inferred; circumstances being proved which either necessarily or usually attend such facts.

**Circumstantibus, Tales de.** See *Tales*.

**Citation**, a summons to appear, applied particularly to process in the Spiritual, Probate, and Matrimonial Courts; (2) *Citation viis et modis*, one posted up in a public place; (3) A reference to authorities in support of an argument.

**City**, a town corporate, which usually has or has had a bishop and cathedral church.

**City of London Court**, possesses a local jurisdiction analogous to that of a County Court. The judge is the Recorder or the Common Serjeant. See *Mayor's Court*.

**Civil**, stands for the opposite of criminal, of ecclesiastical, of military, or of political.

**Civil Bill Court**, tribunal in Ireland with a jurisdiction analogous to that of the County Courts in England.

**Civil death**. A man is said to be civilly dead when he has been attainted of treason or felony, and, in former times, when he abjured the realm or went into a monastery.

**Civil Law**, that rule of action which every particular nation, commonwealth, or city has established peculiarly for itself, more properly distinguished by the name of *municipal law*. (2) The law compiled by the Roman jurists; cf. *Roman Law*.

**Civil list**, the revenue settled on the Sovereign, out of which are defrayed his personal and household expenses, as well as those for secret or special services. It now amounts to £385,000. See *Crown lands*.

**Civil remedy**, one open to a private person, as opposed to a criminal prosecution, which is brought by the Crown.

**Claim**, the assertion of a right. Prior to 3 & 4 Wm. IV. c. 27 (see s. 11), an entry made peaceably on land by one who had a legal right to do so (or his agent), once in every year and a day, which was called a *continual claim*, kept alive the right. (2) See *Statement of Claim*.

**Claimant**, one who makes a claim. (2) The plaintiff in the old action of ejectment.

**Claim of liberty**, a suit or petition to the Queen in the Court of Exchequer, to have liberties and franchises confirmed there by the Attorney-General.

*Clam delinquentes magis puniuntur quam palam.* —(Those sinning secretly are punished more severely than those sinning openly.)

**Clam, vi, aut preario** by stealth, force, or licence.

**Clarencieux.** See *Kings-at-Arms*.

**Clarendon, Constitutions of**, were enacted by Henry II. in 1164 to limit the pretensions of the clergy within the realm.

**Clause irritant** (Sc.), that clause in a deed which declares void the acts of a tenant for life or other limited proprietor, contrary to the conditions on which he holds.

**Clause resolutive** (Sc.), that which extinguishes his estate. See last title.

*Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerunt.*—(A general clause concerning the residue does not comprehend those things which are not of the same kind with those which have been specially expressed.)

*Clausulae inconsuetæ semper inducunt suspicionem.*—(Unusual clauses always excite suspicion.)

**Clausum fregit.** See *Close*.

**Clayton's Case**, The rule in, decided that in cases of current accounts, e.g., a banker's, in the absence of an express appropriation by a creditor, the first payment in is to be set against the first paid out.

**Clean hands**, A man must come into Court with, i.e., he must in the matter of his claim be free from taint of fraud, etc.

**Clear days.** If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last.

**Clearance.** See *Transire*.

**Clearing**, a method adopted by London banks for exchanging their drafts and settling the difference.

**Clerks of Arraigns**, do for the judges in criminal courts what the masters do for the judges in civil matters. See *Master*.

**Clerks of Assize**, officers who take the place of the associates or masters on the circuits. They record the judicial proceedings.

**Clerk of the Crown.** See *Crown office in Chancery*.

**Clerk of the House of Commons**, one of the chief officers of the Lower House. The Crown appoints him by letters patent, and when necessary he can appoint a deputy.

**Clerk of the Parliaments**, one of the chief officers of the House of Lords.

**Clerk of the Peace.** His duties are to officiate at sessions of the peace, to prepare indictments, and to record

the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county.

**Clerks of Records and Writs**, officers of the Court of Chancery, whose duties are now (since 1879) transferred to the *Masters of the Supreme Court*, and their office abolished.

**Clerks of Seats**, in the Principal Registry of the Probate Division, prepare the grants of probate and letters of administration.

**Close**, a piece of land. *Frangere Clausum*, to break close, is to commit trespass (*q. v.*). (2) Of *pleadings*, the conclusion, when issue has been joined. (3) Of a *bankruptcy*, when the property has been realised and distributed.

**Close rolls**. See *Close Writs*. **Close writs** are royal letters under the Great Seal, which, being not intended for public inspection, are closed and sealed, and recorded in the *close rolls*.

**Clough**, a valley. (2) Allowance in weight.

**Club**, a voluntary association founded on contract for social or other purposes. It is not, however, a company, a partnership, or even a collection of co-owners. The Court will not interfere with the decision of a club expelling a member, if such decision has been arrived at *bond fide* and in accordance with the rules of the club. A proprietary club is one in which the expense and risk is borne by a contractor who is paid by members' subscriptions.

**Coal**, may only be sold by weight. See *Weights and Measures Act*, 52 & 53 Vict. c. 21, s. 20.

**Coal Mines**. See *Coal Mines Regulations Act*, 50 & 51 Vict. c. 58.

**Cockpit**, the old name for the Judicial Committee of the Privy Council, the room where it sat being on the site of the old cockpit of Whitehall.

**Code**, a collection or system of laws. The collection of laws and constitutions made by order of the Emperor Justinian in 528 is distinguished by the appellation of "The Code." The *Code Napoleon*, or Civil Code of France, is the most celebrated modern code.

**Codicil**, a supplement to a will, containing anything which the testator wishes to add or alter. It must be executed with the same formalities as a will. See *Attestation*.

**Co-emptio** (Roman law), the sale of a wife to a husband.

**Cognati**, relations by the mother's side.

**Cognisance or Conusance**, the hearing of a thing

judicially. (2) An acknowledgment of a fine. Hence *Cognisor*, the person who acknowledged the right of the *Cognisee*. See *Fine*. (3) *Cognisance for rent*, in the action of replevin, is a plea of justification or avowry (*q. v.*) made by a bailiff or servant.

**Cognisance** (Judicial). There are certain matters of which a judge is bound to take judicial cognisance without having them proved in evidence: as, *e.g.*, the public statutes of the realm, the privileges of the House of Commons, the Superior Courts and their jurisdiction, and the privileges of their officers. A judge is not bound to take cognisance of current events, however notorious, nor of the law of other countries.

**Cognition** (Sc.), finding. See *Inquisition* of Lunacy. (2) *Cognition and sale*, the process whereby leave is obtained to sell land of a ward.

**Cognitor** (Roman law), a person appointed by a party to a suit to conduct it for him.

**Cognovit (actionem)**, a defendant's written *confession* of an action brought against him; *i.e.*, his admission that he has no available defence, and consents to judgment being entered against him.

**Co-heir**, one of several to whom an inheritance descends.

**Coif**, a white silk cap, the badge of serjeants-at-law.

**Coke, Sir Edward**, Chief Justice of England in the time of James I. Author of the *Institutes*, and of an edition of Littleton's Treatise on Tenures, and of *Reports*.

**Coliberts**, socage tenants.

**Collateral**, by the side of, indirect:—*Collateral security*, one added to the principal security, either as secondary or not. (2) *Relationship*, as opposed to lineal, is that of persons descended from a common ancestor, *e.g.*, cousins. (3) *Power*, one not coupled with an interest; less correctly, one in gross, *i.e.*, not affecting the estate held by the donee of the power.

**Collatio bonorum**, (Roman law), bringing into *hotchpot*

**Collation**, the comparison of a copy with its original to ascertain its correctness. (2) *Of seals*, when upon the same label one seal was set on the back or reverse of the other. (3) *To a benefice*, where the bishop and patron are one and the same person; it thus takes the place of presentation and institution.

**Collative Advowson**, is one of which the right of patronage is in the bishop. See *C*

**Collegatory**, a person who has a legacy left to him in common with other persons.

**Colligenda bona (defuncti)**. In default of representatives and creditors ready to administer to an intestate, the Probate Court may grant to some fit person letters *ad colligenda bona*, *to collect the goods* of the deceased, which neither makes him executor nor administrator, his only business being to keep the goods in his safe custody, and guard them from waste or decay.

**Collision**, of ships, the running foul of one another. Where this arises from the neglect of both, each pays the other half the damage sustained.

**Colloquium** (*a talking together*), was the term in pleading applied to the statement in declaration for libel or slander, that the libellous or slanderous imputation had reference to the plaintiff.

**Collusion**, a compact between persons apparently hostile to do some act in order to prejudice a third person, or for some improper purpose. Judgment obtained by collusion is a nullity. See *Interpleader*.

**Colour**, a *prima-facie* right or title. Pleadings in *confession and avoidance* (*q. r.*) had to give colour, *i.e.*, to admit some apparent right in the opposite party so as to justify the allegation of new matter. Colour was either expressed or implied. Obsolete. (2) Colour of right means semblance of right.

**Colourable**, that which is not what it purports or professes to be, deceptive; *e.g.*, an alteration made only for the purpose of evading the law of copyright, which leaves the thing substantially as much an infringement as before.

**Combination**, of workmen, an assembly met to perpetrate unlawful acts. See the Conspiracy and Protection of Property Act, 1875.

**Comes**, a count, or sheriff of a county, or *comitatus*.

**Comitatu commisso**, a writ or commission whereby a sheriff is authorised to enter upon the charge of a county.

**Comity of nations**, the obligation granted by courtesy to the laws of one nation within the territories of another.

**Commandite**, or **In commendam**, a form of partnership in France (*Société en Commandite*) in which certain of the partners (*commandataires*) take no active share in the business, but merely lend money to it, and are only liable to the extent of such money.

**Commendam** (*Ecclesia commendata*), a living committed to the care of a clergyman until a proper pastor can be provided.

**Commendation**, in feudal law, was where the owner of land placed himself under the protection of a lord, and became his vassal.

**Commissary**, one who is sent to execute some office or duty for another, *e.g.*, a delegate of the bishop.

**Commission**, an authority or order to do some act. When given by the Crown, the persons to whom it is given are often called *commissioners*, *e.g.*, the Railway commissioners. Some commissions are temporary, *e.g.*, of *assize*, of *oyer and terminer*, to *examine witnesses*, of the *peace* (*q. v.*). (2) A percentage.

**Commission Agent**, or **Merchant**, a factor employed to sell goods for a percentage or commission.

**Commission-day**, the opening day of the assize.

**Commission del Credere**, where an agent of a seller undertakes to guarantee to his principal the payment of the purchase-money.

**Commissoria lex** (Roman law), a clause by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase-money at the time agreed on.

**Commitment**, the sending a person to prison by warrant or order, either for a crime, contempt, or contumacy.

**Committee of a Lunatic or Idiot**, the person to whom the custody of the person or property of a lunatic is committed by the Lord Chancellor.

**Committee of Inspection**, persons, not exceeding five nor less than three, chosen by the creditors of a bankrupt to superintend the disposition of the estate by the trustee. See Bankruptcy Act, 1883, s. 22.

**Committee of the House**, of Lords or of Commons, is a sitting of the House, or of certain members selected for the purpose, to consider special subjects.

**Committitur piece**, an instrument in writing on parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him.

**Commodatum** (Roman law), a thing lent for a definite time, to be enjoyed and used under certain conditions, without any pay or reward.

*Commodum ex injuriâ sed nemo habere debet.* — (No person ought to have advantage from his own wrong.)

**Common**, a profit which a man has in the land of another,

in common with him and others. Except in the case of copyholders it cannot be claimed by custom, but by grant or prescription only. It is of four principal kinds : (a) of *pasture*; (b) of *turbary*, i.e., taking peat or turf; (c) of *estovers* (*q. v.*); (d) of *piscary*, i.e., fishing. Commons may be *appendant*, i.e., enjoyed by all the freehold tenants of a manor; *appurtenant*, i.e., attached to the ownership of a particular land or house; *in gross*, i.e., not connected with tenure, but belonging to individuals; or *because of vicinage*, i.e., belonging to tenants of adjoining townships or manors. (2) *Common* also signifies land subject to rights of common. See *Tenancy*.

**Common Bench**, a name of the Court of Common Pleas.

**Common counts**, the general name for certain technical pleas or claims (*e.g.*, *indebitatus assumpsit*), now abolished by the Judicature Act.

**Common employment**. See *Master*.

**Common fine**, money paid to the lord by his tenants.

**Common informer**, a person who prosecutes others for breaches of penal laws, and receives part of the penalty for doing so.

**Common Law**, is opposed (1) to equity; (2) to statute law. In the former sense it includes the Queen's Bench and the Common Pleas and Exchequer Courts, now merged in the Queen's Bench Division.

**Common Seal**, the seal used by a corporation.

**Common Serjeant**, a judicial officer of the Corporation of the City of London, deputy of the Recorder.

**Commonable**, a thing over, by, or in respect of, which a right of common may be exercised, *e.g.*, lands, beasts, or messuages.

**Commorancy**, residence within a certain district.

**Commorientes**, dying together, *e.g.*, by shipwreck. By English law there is no presumption as to survivorship in such a case.

**Commutation**, the conversion of a right to receive a variable or periodical, into a fixed or gross, payment. See *Tithe*. (2) Change of penalty or punishment.

**Commutative contract**, one in which each of the contracting parties gives and receives an equivalent.

**Company**. See *Joint Stock Company*.

**Compearance** (*Sc.*), appearance of a defendant.

**Compendia sunt dispendia**.—(Abbreviations are a loss of time; *cf.* The longest way round is the shortest way home.)

**Compester**, to till (used of oxen).

**Complainant**, one who urges a suit or commences a prosecution against another. See *Bill*.

**Compos mentis** (*sound of mind*).

**Composition**, an agreement by a debtor with his creditors to pay so much in the pound (which is also called the *composition*); it is drawn up in the form of a *composition deed*. (2) See *Tithe*.

**Compound Householder**, an occupier of part of a house, who has the franchise by virtue of the rates being paid either by himself or by the owner of the house. See 14 & 15 Vict. c. 14.

**Compound interest**, interest upon interest, *i.e.*, when the *simple* interest on a sum of money is added as it becomes due to the principal, and then bears interest, becoming a sort of secondary principal. See *Account with rests*.

**Compounding**, a *debt*, making a *Composition* (*q. v.*); (2) a *felony*, is to enter into an agreement for valuable consideration not to prosecute for felony, or to favour a felon.

**Comprint**, printing in violation of copyright.

**Compromise**, settlement of an action by agreement.

**Comptroller in Bankruptcy**, an officer who until 1883 checked the proceedings and accounts of the trustee in a bankruptcy. This, under the Bankruptcy Act, 1883, ss. 78-81, is done by the Board of Trade.

**Compulsory**, in ecclesiastical procedure, is a *subpoena*. (2) See *Pilot*.

**Compurgator**, one who on oath asserts another's innocence. Under the early Saxons a person accused of a crime was acquitted, if a certain number (twelve or more) of *Compurgatores* (*juratores* or *justificatores*) came forward, and swore to a *veredictum* (or true statement) that they believed him innocent. This was also called *wager of law*; it was abolished after long disuse by 3 & 4 Wm. IV. c. 42.

**Computo**, an ancient writ to compel a bailiff, receiver, or accountant, to yield up his accounts.

**Concealers**, persons who were used to find out lands which had been privily appropriated from the Crown.

**Concealment**, active or fraudulent, is ground for the rescission of a contract; (2) of birth, by secret disposition of the dead body, is a misdemeanor.

*Concessio versus concedentem latum interpretationem habere debet*.—(A grant ought to have a liberal interpretation, or be strictly construed, against the grantor.)

**Concessit solvere** (*he granted and agreed to pay*), an action

of debt upon a simple contract. It lies by custom in London and Bristol city courts.

**Concilium**, A rule for, in proceedings on a writ of *c* is one directing the case to be set down for argument.

**Conclude**, to bar, estop. (2) *To conclude for* (Sc pleadings, is to claim.

**Concord**, an agreement between parties, who intend to levy a fine of lands one to the other, how and in what manner the lands shall pass; (2) a compromise.

**Concourse** (Sc.), concurrence. *Concourse of actions* (the bringing of more than one action on the same ground).

**Concurrent jurisdiction**, is where different tribunals are authorised to deal with the same subject-matter at the convenience of the suitor. (2) *Writ*, a writ of summons of the same type as the original writ, and remaining in force for the same time; used where there are several defendants, or it is impossible to serve the same defendant in different places.

**Condemnation**, adjudging a captured vessel to be a prize.

**Condescendence** (Sc.), a part of the proceedings in cause, setting forth the facts of the case on the part of the pursuer or plaintiff.

**Condition**, a declaration or provision which qualifies or defeats an estate or right, making it *conditional* as opposed to absolute. It may be (1) *express*, or *implied by law*; (2) *possible* or *impossible*; (3) *dependent*, *independent*, or *mutual*; *precedent* or *subsequent* (q. v.). See *Restraint of Marriage*.

**Conditional fee.** See *Base fee*.

**Conditional limitations**, partake of the nature both of a condition and a remainder; of a condition, so far as they abridge or defeat the estates previously limited; of a limitation, so far as, upon the contingency taking effect, they transfer the estate to a stranger. They thus differ from a contingent remainder, which waits for the regular determination of the previous estate.

**Conditions of sale**, the terms (as to manner of sale, price, and the like,) on which property is offered by the vendor. Statutory conditions of sale are enacted by 44 & 45 c. 41, s. 3.

**Condonation**, a pardoning of a conjugal offence, which prevents it from being made at any future time the subject of legal proceedings.

**Conduct-money**, money paid to a witness for his travel-expenses.

**Conductio** (Roman law), a hiring (*q. v.*).

**Coney**, a rabbit. See *Game*.

**Confarreatio** (Roman law), the most solemn form of marriage.

**Confederacy**, a combination of two or more persons to do damage or injury to another or to commit some unlawful act.

**Conference**, an interview between counsel and the solicitor who instructs him (with or without his client). (2) **Parliamentary**, a meeting of the two Houses to reconcile differences, which is effected by appointing persons called managers out of either House to form a deputation.

**Confessing error**, the affirmative plea to an assignment of error.

**Confession and Avoidance**, prior to the Judicature Act, a plea admitting certain facts alleged by the opponents' preceding pleading, but avoiding their legal effect by alleging a matter. These pleas were distinguished as pleas in mitigation or excuse, and pleas in discharge or release. Now abolished. See *Colour*.

**Confession, Judgment by**. See *Cognovit*.

**Confession of defence**. Where defendant alleges a ground of defence arising since commencement of the action, plaintiff may deliver confession of such defence and sign a judgment for his costs up to the time of such pleading unless he otherwise ordered (R. S. C. 1883, Ord. XXIV., r. 3). Plaintiff thereby loses all further right of action.

**Confession of plea**, was the old *confession of defence*.

**Confesso, Bill taken pro**. Where defendant did not give a defence, the plaintiff was allowed relief on the footing that his pleadings were to be *taken as admitted*. See R. S. C. 1883, Ord. XXVII., r. 11.

**Confidential communications**. See *Privileged*.

**Confirmatio Chartarum**, the statute 25 Edw. I., 1297, which re-enacted Magna Charta, with some additions.

**Confirmation**, a species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased. Estates which are void cannot be confirmed, but only those which are voidable. (2) The confirmation of a bishop's election by the archbishop. (3) Probate and letters of administration.

**Confiscation**, in international law, is the punishment for carrying *contraband of war* (*q. v.*). See *Pre-emption*.

**Conflict of laws.** In the case where a suit is brought in one country, and the parties (or one of them, or the subject-matter of the suit) belong to another, and the laws of the two countries upon the subject are at variance, there is said to be a conflict of laws. See *Lex loci contractus*.

**Conformity, Bill of.** When an executor or administrator found the affairs of his testator or intestate so much involved that he could not safely administer the estate, except under the direction of the Court of Chancery, he filed this bill against the creditors generally for the purpose of having all their claims adjusted, and a final decree settling the order and payment of the assets; to which all parties are bound to *conform*.

**Confrontation**, in matrimonial suits, is the bringing of the respondent into court for identification by the witnesses.

**Confusion of Boundaries.** If there is, between two estates, the Chancery Division will issue a commission; or if the case be simple, decide them in an action for recovery of land.

**Confusion, Property by.** Where goods of two persons are so intermixed that the several portions can no longer be distinguished; if the intermixture be by consent, it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if one wilfully intermix his property with that of another man, without his approbation or knowledge, the law gives the entire property to him whose right is invaded, and endeavoured to be rendered uncertain without his consent.

**Congeable**, lawful, done with permission.

**Congé d'Accorder**, leave to accord or agree.

**Congé d'Elire, d'Eslire** (*leave to choose*). A licence from the Crown to a dean and chapter to proceed to the election of a bishop, when a see becomes vacant. It is accompanied by a *letter missive*, giving the name of the person to be elected.

**Conjoints**, persons married to each other.

**Conjugal rights**, see *Restitution*.

**Conjuration**, a compact made by persons combining by oath to do any public harm. (2) The attempt to have conference with evil spirits.

**Connivance**, guilty knowledge of, or abetting in, a crime; and especially, the consent, express or implied, by one spouse to the adultery of the other.

**Consanguineus frater** (Roman law), a brother by the father's side; in contradistinction to *frater uterinus*, the son of the same mother.

**Consanguinity**, or **kindred**, the connection or relationship of persons by descent. It is either lineal or collateral.

*Consensus non concubitus facit matrimonium.*--(Consent, and not cohabitation, constitutes marriage.)

*Consensus tollit errorem.*--Consent removes mistake, *i.e.*, where persons are agreed in a mistaken view of the legal effect, *e.g.*, of a phrase, they are bound by the meaning they originally intended to give it. Cf. *Communis error facit jus*.

**Consent**, if obtained by fraud, is not binding. See *Order by Consent*.

*Consententes et agentes pari pena plectantur.*--(Those consenting and those perpetrating are embraced in the same punishment.)

**Consequential damages**, those losses or injuries which follow an act, but are not direct and immediate upon it.

**Conservators of rivers**, commissioners appointed by statute to regulate the navigation, etc., of certain rivers.

**Conservators of the Peace**, officers appointed to preserve the public peace. Some are so by virtue of their office; *e.g.*, judges and coroners: those specially appointed are now called *justices of the peace*.

**Consideration**, the price, motive, or matter of inducement of a contract, which must be lawful in itself. A simple contract, *i.e.*, one not under seal, derives its binding force from the existence of a valuable consideration between the parties, but a deed imports a consideration, and so is binding though *voluntary*, *i.e.*, without consideration. Consideration may be *executed*, past, or performed; *executory*, to be performed; *concurrent*, or *continuing*, partly both. *Good* or *meritorious* consideration is that originating in relationship and natural affection; *valuable*, that which has a money value. The former was never binding in the eye of the law, except in the case of a covenant to stand seized to uses, which is now disused: and "good" consideration now usually means "valuable." See *Turpis*.

**Consideratum est per curiam** (*it has been considered by the Court*), the formal commencement of a judgment.

**Consignation** (Roman law), the deposit of a thing owed with a third person, under the authority of the Court.

**Consignment**, the sending of goods to another, usually for purchase. (2) The goods sent.

**Consistorial Actions** (Sc.), matrimonial causes.

**Consistory Court**, the ecclesiastical court of a diocese.

**Consolato del mare, Il**, a code of sea-laws compiled by order of the ancient kings of Arragon.

**Consolidated Fund**, the public revenue, which is derived from customs, excise, stamps, and other taxes.

**Consolidation (1) of actions.** If two or more actions are brought by the same plaintiff against the same defendant, for causes of action which might have been joined in the same action, the Court will in general compel the plaintiff to consolidate them, *i.e.*, have them tried together. And if several actions are brought against the same defendant for the same cause, the Court may stay the proceedings in all but one, which is then tried as a test action. (2) *Of Securities*, is the right of a mortgagee, whether original or by assignment, who holds more than one mortgage by the same mortgagor, though such mortgages may be of different properties and for distinct debts, to insist, after the time for redemption has expired, that the mortgagor shall not be allowed to redeem one without redeeming the others as well. See now, however, 44 & 45 Vict. c. 41, s. 17. (3) In the Roman law, the uniting the possession, occupancy, or profits of land with the property, and *vice versa*. (4) In the ecclesiastical law, the uniting two benefices by assent of the ordinary, patron, and incumbent. (5) In the statute law, the fusing of many Acts of Parliament into one.

**Conspiracy**, an unlawful combination or agreement between two or more persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large.

**Constables**, inferior officers appointed to keep the peace. *High*, or *chief*, are those chosen at the Hundred Court; *petty*, or *parish*, by justices at petty sessions; *borough*, by the watch committee. *Special*, are appointed on particular occasions.

**Constablewick**, the jurisdiction of a constable.

**Constat**, a certificate of *that which appears* on the Record. See *Inspecimus*.

**Constituent**, one who appoints an agent or attorney.

(2) One who elects by his vote a member of Parliament.

**Construction**, the interpretation of a written instrument.

**Constructive**, implied by law, though not actual in fact, *e.g.*, notice, trust. (2) That which is effected by the doing of something equivalent; *e.g.*, *delivery*, when a key is delivered

as representing the goods within the warehouse, or a part as representing the whole.

**Constructive notice**, the knowledge which the law implies a person to have had, whether he actually had it or not. See 45 & 46 Vict. c. 39, s. 3.

**Constructive total loss**, in the law of marine insurance, denotes a loss which entitles the insured to claim the whole amount of his insurance, on giving the insurers notice of abandonment and relinquishing all right to anything which may be saved of the subject-matter.

**Constructive treason**, that which is so by mere inference, and not according to the definition given by the law.

**Constructive trust**, arises when a person is, by reason of his position towards another, invested with a responsibility disabling him from carrying out certain transactions for his own benefit, e.g., a trustee may not renew a lease on his own behalf.

**Consuetudinibus et servitiis**, a writ to recover arrears of rent.

*Consuetudo est optimus interpres legum.*—(Custom is the best expounder of the laws.)

*Consuetudo ex certâ causâ rationabili usitata prirat communem legem.*—(A custom founded on a certain and reasonable ground supersedes the common law); e.g., such customs as gavelkind (*q. v.*), which prevail over the law of descent, though differing from it.

**Consul**, an official appointed by Government to reside in a foreign country, and there to look after the interests of the subjects of the country which appoints him; e.g., by giving assistance or advice, or by making due representations to the proper authorities.

**Consultary response**, the opinion of a court of law on a special case.

**Consultation**, a writ whereby a cause, having been wrongfully removed by prohibition from an ecclesiastical to a temporal court is returned thither again. (2) A meeting of two or more counsel, with the solicitors instructing them, for the purpose of deliberation.

**Consummation**, the due completion of a thing; e.g., of marriage. (2) *Of tenancy by the curtesy*, is when a husband, upon his wife's death, becomes entitled to hold her lands by courtesy (*q. v.*). His estate becomes *initiate* upon birth of a

**Contagious Diseases Acts.** As to persons, see 29 Vict.

c. 35, and 32 & 33 Vict. c. 96, which Acts apply to certain military and naval stations only. The operation of these Acts was temporarily discontinued in 1883, and finally repealed by 49 Vict. c. 10. (2) As to *animals*, see 41 & 42 Vict. c. 74, amended by 47 Vict. c. 13; 47 & 48 Vict. c. 47; 49 & 50 Vict. c. 32; and by 53 & 54 Vict. c. 14; the object of which is to prevent the spreading of certain diseases, such as cattle plague, among animals.

**Contango** (Stock Exchange). See *Continuation*.

**Contemner**, one who has committed contempt of court.

*Contemporanea expositio est optima et fortissima in lege.*--(A contemporaneous interpretation is the best and most authoritative in the eye of the law--on the ground that the intention of the statute or instrument is then best known.)

**Contempt of Court.** A disobedience to the rules, orders, process, or dignity of a court, which has power to punish for such offence by fine or imprisonment. A person is said to *purge* or *clear* his contempt when he expresses contrition and submits himself to the Court. (2) *Of Parliament*, a violation of the privileges of either House, punishable by commitment with or without fine.

**Contentement**, a man's countenance or credit, which he has together with, and by reason of, his freehold. (2) That which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.

**Contentious business**, a term used in the Court of Probate, meaning generally the business of obtaining probate or administration when the grant is opposed: *non-contentious business* is where there is no such opposition.

**Contentious jurisdiction**, jurisdiction to hear and determine any matter between party and party in an action or other judicial proceeding.

**Contestation of suit (Contestatio litis)** (Roman law), the plea by a defendant and joinder of issue in the Ecclesiastical Courts.

**Contingency**, an uncertain event. When an estate, legacy, etc., is limited so as to depend on a contingency, it is *contingent*. See *Remainder*. (2) *With a double aspect*, when one event only is expressed by the party, and two events are clearly in his contemplation.

**Continuance (Notice of Trial by)**. By this a plaintiff, prior to the Judicature Act, could defer trial to a sitting later than that for which he had originally entered the action. (2) See *Puis Darrein*.

**Continuando.** Under the old action of trespass, to *lay the action with a continuando* was to allege that the defendant's trespass was a *continuing* one, whereby multiplicity of actions was avoided.

**Continuation (Stock Exchange).** Settlements of accounts are made on the Stock Exchange once a fortnight. If a buyer of stock, etc., is unable to pay for it, or a seller is unable to produce it, they may by agreement *carry over* or *continue* the bargain until the next account day. It may be continued *even*; but, as a rule, in the former case the buyer pays a *contango*, which represents a fortnight's interest on the money he is unable or unwilling to pay; in the latter case the seller pays him a *backwardation* or fine for non-delivery.

**Contra bonos mores**, against good morals.

**Contra formam collationis**, a writ that issued where lands given in perpetuity for religious or charitable purposes were alienated, to the disherison of the religious or charitable institution. By means of this writ the donor or his heirs could recover the lands.

**Contra formam feoffamenti**, a writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements by charter of feoffment, who was distrained for more services than were mentioned in the charter.

**Contra formam statuti** ("contrary to the form of the statute in such case made and provided"). The usual conclusion of every indictment, etc., brought for an offence created by statute.

*Contra non valentem agere nulla currit prescriptio.*—(Time does not run against a person under disability.) This maxim is only true within certain limits fixed by the Statutes of Limitation.

**Contra pacem** (*against the peace*).—It is generally necessary in indictments to allege that the offence was committed against the peace of our Lady the Queen.

**Contraband**, goods prohibited to be imported or exported. (2) In international law, those which a neutral may not carry to a belligerent; e.g., munitions of war.

**Contract**, an agreement between competent parties, upon a legal consideration, to do, or to abstain from doing, some act. Contract in its widest sense includes (1) those of record, and (2) those under seal, or *specialties*; but it is usually applied to (3) those not under seal, scil. *simple*, or *parol*, contracts (under which written as well as verbal are

**included).** See also *Agreement*, *Consideration*. A *personal contract* is one depending on the skill or qualities of one of the parties: a *continuing contract*, one to perform certain acts from time to time during a stated period: an *entire contract*, one which cannot be divided into separate parts to be separately performed; *e.g.*, one by a sailor to serve for a certain voyage.

**Contract-note**, the note sent by a broker to his client advising him of the sale or purchase of any stock or marketable security. See *Stamp Act, 1891*.

**Contract of benevolence**, a contract made for the benefit of one of the contracting parties only; *e.g.*, a mandate or deposit.

*Contractus exturpi causâ rei contra bonos mores, nullus.*—(A contract arising out of a base consideration, or against morality, is null.)

**Contravention**, an act done in violation of a legal obligation. (2) (Sc.), the action founded on a breach of *law-burrows* (*q. v.*).

**Contribution**, the performance or satisfaction by each of two or more persons, *e.g.*, sureties, jointly liable by contract or otherwise, of his share of the liability. (2) By an estate, in administration, is the bearing of its proportionate share of the liabilities. (3) In maritime law, *average contribution* is the amount to be contributed by each person towards making good a loss at sea, and is proportioned to the value of the goods he may have shipped. See *Average*.

**Contributio facienda**, a writ where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution.

**Contributory**, a person liable to contribute to the assets of a joint-stock company in the event of the same being wound up. Those who are members at the time of winding up are primarily liable, and then those who have ceased to be members within the twelve months preceding. The first are called A, the second B, contributors. (2) See *Negligence*.

**Contubernium** (Roman law), the union of slaves with their master's consent.

**Contumacy**, a refusal to appear in court when legally summoned: disobedience to the rules and orders of a court.

**Contumace capiendo**, a writ issued out of the Court of Chancery for the commitment of a person pronounced by an Ecclesiastical Court to be guilty of contempt.

**Conusance**, acknowledgment: (2) *of pleas*, jurisdiction; a privilege that a city or town has. See *Cognisance*.

**Conusant**, knowing or aware of.

**Conventio in unum**, agreement between two parties upon the sense of the contract proposed.

*Conventio runcit legem*.—[An agreement prevails against (any implication of) law.]

**Convention**, an assembly of the Houses of Parliament without summons from the Crown. (2) An agreement with a foreign state, e.g., as to the extradition of fugitive offenders.

**Conventional estates**, those which are created by the express acts of the parties, in contradistinction to those which are legal, and arise from the operation of law.

**Conventione**, a writ for the breach of any covenant in writing, whether real or personal. Obsolete.

**Conversion**, the wrongful appropriation of the goods of another. See *Trover*. (2) *Equitable conversion* is the changing of the nature of property, which may be (a) *actual*, e.g., by converting land into money by selling land, or *vice versa*; or (b) *constructive*, where such an operation is assumed to have, though it has not actually, taken place. The property constructively converted immediately assumes the same qualities as if the operation had been actually carried out.

**Conveyance**, an instrument which transfers property from one person to another. Conveyances are (a) *by matter of Record*; (b) *by matter in Pais*; (c) *by special custom*; e.g., in transferring copyholds. *Fraudulent conveyances* are those made without valuable consideration (*q. v.*) to defraud creditors or purchasers; they are invalidated by 13 Eliz. c. 5, and 27 Eliz. c. 4.

**Conveyancers**, were persons certificated by one of the Inns of Court to carry on the practice of conveyancing without being called to the Bar. They might sue for their fees. This custom has of late fallen into disuse, and the term is used, in contradistinction to *Equity Draughtsmen*, of barristers who employ themselves chiefly in the preparation of deeds or assurances of property.

**Conveyancing**, the science and art of the alienation of property by means of appropriate instruments. See the Acts 44 & 45 Vict. c. 41, and 45 & 46 Vict. c. 39.

**Conveyancing Counsel**, persons appointed by the Lord Chancellor under 15 & 16 Vict. c. 80, s. 40, on whose opinion as to title or conveyance of an estate the Court is empowered

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to act. They must have practised ten years at the date of their appointment.

**Convict**, a person sentenced to death or penal servitude for treason or felony. *Conviction* may be (*a*) *ordinary*, or (*b*) *summary* by magistrates or justices under statutory powers.

**Convocation**, an assembly of the clergy. There is one for the province of Canterbury, and another for that of York.

**Convoy**, ships of war which accompany merchantmen in time of war to protect them from the enemy.

**Coparcenary**, a tenancy which arises when an inheritable estate descends from the ancestor to several persons possessing an equal title to it, who are called coparceners, or pareners; *e.g.*, to daughters by the common law, or to sons by the custom in gavelkind. Pareners form together one heir to their ancestor.

**Cope**, a custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire. (2) A hill. (3) The roof or covering of a house. (4) A church vestment.

**Copy**, a transcript of an original document. *Office copy*, one made by an officer appointed for the purpose, and officially sealed.

**Copyhold**, a base tenure founded upon immemorial custom. *Copyhold estate*, one forming parcel of a manor held by *copy* of the court rolls, and originally by the will of the lord, though this is no longer so. The freehold, before *enfranchisement* (*q. v.*) of copyhold estate is in the lord; but in most respects the ownership of a copyholder is as absolute as that of a freeholder. The method of alienation is by *surrender*, and *admittance* of the surrenderee. See *Heriot*, *Fine*, *Customary Freehold*.

**Copyhold Commissioners**. The tithe commissioners for England and Wales when acting as commissioners for carrying the provisions of the Copyhold Acts into execution. See *Land Commissioners*.

**Copyright**, an incorporeal right, being the exclusive privilege of printing, reprinting, selling, and publishing his own original work, which the law allows an author. It lasts for his life and seven years, or for forty-two years, whichever is the longer period. It is assignable by an instrument in writing, or by entry in the register. By later statutes it is extended (*inter alia*) to prints, engravings, sculptures, paintings, designs, and music.

**Coram non judice** (*in presence of a person who is not [the proper] judge*). When a suit is brought in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and any judgment which may be delivered is null and void.

**Coram paribus** (*before his peers*).

**Co-respondent**, the man charged by a husband with adultery, and made a party to a suit for dissolution of marriage.

**Cornage**, a form of tenure in grand sergeanty, by blowing a *horn* to give warning of an enemy.

**Cornwall, Duke of**, a title by inheritance of the eldest son of the reigning sovereign. See also *Stannary*.

**Corody**, an allowance made by an abbey, etc., founded by the Crown to a person nominated by the latter. Obsolete.

**Coronatore eligendo**, or **exonerando**, the writ issued to the sheriff commanding him to elect or remove a coroner.

**Coroner**, a person possessing judicial and ministerial functions. In the former capacity his chief duty is to hold inquests, in doing which he may commit for trial any person against whom the jury find a verdict of murder or manslaughter. In the latter he acts as sheriff's substitute. He is chosen for life, and is *ipso facto* a magistrate and justice of the peace.

**Corporal oath**, so called because the party taking it lays his hand on the New Testament.

**Corporation**, an artificial person or body of persons established under a corporate name for preserving in perpetual succession certain rights differing from those of the individuals or *corporators* who constitute the corporation from time to time. It is either *aggregate*, consisting of many members, or *sole*, consisting of one person only. It is also either *spiritual* (*ecclesiastical*) or *lay*—subdivided into *civil*, created for temporal, *eleemosynary*, for charitable, purposes.

**Corporeal hereditament**, that subject of property which is comprised under the denomination of *things real*; e.g., lands and houses.

**Corpus cum causâ**, a writ which issued out of Chancery to remove both the body and record touching the cause of any man lying in prison.

**Corpus juris civilis**, the Institutes, Pandects, and Code (with the Novellæ) of Justinian.

**Corroborative**. See *Evidence*.

**Corruption of Blood**. See *Attainer*.

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**Corrupt practices.** At elections those are treating, undue influence, bribery, and personation. *Vide* also 46 & 47 Vict. c. 51, sec. 3; 47 & 48 Vict. c. 70, and 52 & 53 Vict. c. 69.

**Cosening,** cheating.

**Coshering** (Irish term), rack rent, or tribute.

**Cosinage,** consanguinity. (2) A writ that lay for the heir whose great grandfather was seised of lands and tenements in fee at his death, against a stranger who entered upon the land and abated. Obsolete.

**Cost-book Mining Companies,** are partnerships for the purpose of working a mine under local customs; the partners appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, and enter in a book, called the cost-book, their names, agreement, and the number of shares taken by each.

**Costs,** are (a) of a solicitor, (b) of a litigant. (b) are usually taxed *as between party and party*, which do not include the whole expenses of the litigant: occasionally, as in the case of trustees, costs are allowed *as between solicitor and client*, which include substantially the whole costs of the action. *Costs de incremento, costs of increase*, are the extra expenses incurred, such as witnesses' expenses, fees to counsel, attendances, and Court fees. See *Dives, Pauper, Security*.

**Co-surety,** a fellow-surety.

**Couchant,** lying down (of cattle). See *Levant*.

**Councils of Conciliation,** boards of masters and workmen licensed under 30 & 31 Vict. c. 105, for settling trade disputes.

**Counsel,** a person retained by a client to plead his cause in a court of judicature; a barrister (*q. v.*).

**Count.** The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action, were the *counts*. (2) In criminal law, the several parts of an indictment, each charging a distinct offence. See *Common Counts*.

**Counter-claim.** A defendant in an action may set-off, or set up by way of counter-claim any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim has the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action. If, however, the Court considers that the counter-claim cannot

be conveniently disposed of in that action, or ought not to be allowed, it may refuse permission to the defendant to avail himself of it. See R. S. C. 1883, Ord. XIX., r. 3, *Set-off*.

**Counter-deed**, a secret writing, either before a notary or under a private seal, which invalidates or alters another.

**Counterfeit**, an imitation made without lawful authority, and with a view to defraud.

**Countermand**, to revoke, recall.

**Counterpart**, the corresponding part or duplicate. Where a deed is executed in several *parts*, or copies, by the different parties, that signed by the grantor is the *original*, the others the *counterparts*. (2) The key of a cipher.

**Counter-rolls**, the rolls which sheriffs have with the coroners, containing particulars of their proceedings.

**Counter-security**, a security given to one who has entered into a bond or become surety for another.

**Counter-sign**, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior, to vouch for the authenticity of it.

**Counties Palatine**, are Lancaster and Durham (and formerly Chester). By the Judicature Act the jurisdiction of their Courts of Common Pleas was vested in the High Court; that of the Chancery Courts of Lancaster and Durham being preserved. They are now in the hands of the Crown.

**Countor**, a serjeant-at-law, an advocate.

**County**, a shire or civil division, otherwise called a *county at large*. A *county corporate*, or county of a city or town, is a city or town with separate jurisdiction. See *Counties*.

**County Councils**. Established by 51 & 52 Vict. c. 41, to manage certain specified administrative business of each county. They consist of a chairman, aldermen, and councillors. The aldermen are elected by the councillors for six years, and one-half of their number goes out in every third year.

**County Courts**, inferior local Courts of Record, established since 1846, for the purpose of providing a cheap and summary mode of procedure, where the sum at stake is small. Besides their ordinary jurisdiction, they have jurisdiction in Admiralty matters up to a certain sum, and in Bankruptcy; and have power under various Acts to settle disputes between employers and workmen.

**County Rate**, one levied on the occupiers of land in a county for local purposes.

**County Sessions**, the general quarter sessions of the peace for each county, held four times a year. They have both civil and criminal jurisdiction.

**Court**, a place where justice is administered. (2) The judge. A *Court of Record* is one in which the proceedings are enrolled. A *superior* Court is one which is not subject to the control of any other, except by way of appeal. Courts are also divided into civil, criminal, and ecclesiastical.

**Court-Baron**, a court which, although not one of record, is incident to every manor, and may be held at any place *within* the same, on giving due notice. It generally assembles but once in the year. See *Presentment, Manor*.

**Court for Crown Cases Reserved**, created by 11 & 12 Vict. c. 78, for the decision of points of law arising in criminal trials, and specially reserved by the judge or justices.

**Court-Leet**, a court of record, held once a year within a particular hundred or manor, before the steward of the leet. At it petty offences are *presented* and punished.

**Court-martial**, for the trial of military or naval offences.

**Court of Admiralty**. See *High Court*.

**Court of Arches, Audiences, etc.** See below, and the various titles.

**Court of Chivalry**, was held before the Lord High Constable and Earl Marshal as a court of honour.

**Courts of Conscience**, the same as *Courts of Request*.

**Court of the Duchy of Lancaster**. See *Chancery*.

**Court of Great Session**. See *Wales*.

**Court of Hustings**, a court in the City of London, analogous to the sheriffs' county court.

**Court of Passage**, has jurisdiction over causes of action arising within the borough of Liverpool; and also in Admiralty matters.

**Court of Peculiars**, a branch of the Arches Court.

**Court of Probate**, took the place of the ecclesiastical and other probate courts in 1857. It is now the Probate, Divorce, and Admiralty Division. See *High Court*.

**Courts of Request**, had local jurisdiction in claims for small debts. Supplanted in 1846 by the County Courts.

**Court of Review**, part of the old Court of Bankruptcy, exercising a supervision over the Commissioners. Abolished in 1847.

**Court of Session**, the supreme civil court of Scotland, consisting of the Lord President, the Lord Justice Clerk, and eleven ordinary lords.

**Courts of Survey**, hear appeals by masters or owners of ships from orders for detention of unsafe ships.

**Courts of the Universities** of Oxford and Cambridge, have civil and criminal jurisdiction in matters affecting their own members.

**Cousin-german**, a first cousin, or child of an uncle or aunt; the child (grandchild, etc.) of a first cousin is a cousin once (twice, etc.) removed. Peers are styled cousins of the sovereign.

**Covenant**, an agreement or unilateral contract under seal, i.e., by deed. See *Agreement, Contract*. A covenant is said to *run with the land* (or *the reversion*) when the benefit or burden of it passes to the assignee of the land, etc. See *Title*.

**Covenant to stand seised to uses**, a "voluntary" assurance, operating under the Statute of Uses, and without transfer of possession. Now almost disused.

**Coverture**, the condition of a woman during marriage.  
(2) The continuance of the married state.

**Covin**, fraud, collusion.

**Creditor**, one who trusts or gives credit, correlative to debtor. A secured creditor is one who holds property of the debtor in pledge or mortgage, in addition to his promise to pay, express or implied.

**Creditors' bill**, a bill in equity filed by one or more creditors, by and on behalf of himself or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due administration of the estate.

**Cratio** (Roman law), the period fixed by a testator within which the heir had to formally declare his intention to accept the inheritance.

**Crime**. A crime is the violation of a right, when considered in reference to the evil tendency of such violation, as regards the community at large. It includes felony and misdemeanor.

**Crimen falsi** (Roman law), forgery.

**Crimen læsæ majestatis** (Roman law), treason.

**Crimen repetundarum** (Roman law), bribery.

**Criminal conversation**, adultery. The action of crim. con. is nominally abolished by 20 & 21 Vict. c. 85, s. 59, but an equivalent right to claim damages from the co-respondent by petition is given to a husband by s. 33.

**Criminal information**, a proceeding in the Queen's Bench division by the Attorney-General acting *ex officio*, or by the

**Master of the Crown** Office on the information of an individual. There is no previous indictment or presenting a grand jury.

**Criminal law**, relates to crimes and their punishment, including crown law, which is quasi-criminal ; e.g., indictments for nuisance.

**Criminal letters** (Sc.), one form of criminal process before the High Court of Justiciary, the other being indictment (*q. v.*). They resemble in form a summons in a civil action.

**Cross-claim, Cross-action**, is one made or brought by the defendant against a person who is claiming relief as plaintiff in an action against him. See *Counterclaim*.

**Crossed cheque**, a cheque which has a banker's name written across its face ; it can be paid only to that bank or to the bank on whom it is drawn. See the "Crossed Cheques Act, 1876."

**Cross-examination**, the examination of a witness by the side which did not call him ; generally after examination-in-chief.

**Cross-remainders**. See *Remainder*.

**Crown, The**. See *Sovereign*.

**Crown debts**. Every person having money belonging to the Crown is a crown-debtor ; such are collectors of taxes, brewers, etc. The Crown claims priority for its debts before all other creditors, and recovers them by a summary process called an extent. See *Accountant, Nullum tempus*.

**Crown lands**, the demesne lands of the Crown, which are now usually surrendered by each sovereign on coming to the throne, in return for the *Civil list* (*q. v.*).

**Crown office**, a department formerly belonging to the Court of Queen's Bench, and amalgamated by the Judicature Act, 1879, with the central office of the Supreme Court. Its chief official is the Queen's coroner and attorney.

**Crown office in Chancery**, now transferred to the Royal Court. Its chief official, the Clerk of the Crown, issues writs of summons and election for both Houses of Parliament and performs the duties of the old Hanaper office (*q. v.*)

**Crown paper**, a list of proceedings on the Crown side in the Queen's Bench Division of the High Court.

**Crown solicitor**, the solicitor to the Treasury who acted prior to 1879, in state prosecutions as solicitor for the Crown in preparing the prosecution. See *Public Prosecutor*.

**Cruelty**, such conduct by a husband or wife as endangers the other party to a judicial separation. See *Adultery*.

**Cry de pais**, or **Cri de pais**, hue and cry.

**Cryer**, an officer of a court, whose duty it is to make proclamations.

**Cucking-stool**, a chair on which females for certain offences, e.g., that of being a "common scold," were fastened and ducked in a pond.

**Cui ante divortium** (*cui in vita*), an old writ for a woman forced from her husband, to recover her lands from him to whom her husband alienated them during the marriage against her will.

*Quiunque aliquis quid concedit, concedere videtur et id, sine res ipsa esse non potuit.*—(Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect.) See *Way of necessity*.

*Quilibet in arte sua perito est credendum.*—(Everyone who is skilled in his own art is to be believed.) See *Expert*.

*Cujus est commodum ejus debet esse incommodum.*—(He who has the advantage should also have the disadvantage.)

*Cujus est dare ejus est disponere.*—(Whose it is to give, his is to regulate the manner of the gift.)

*Cujus est divisio alterius est electio.*—(When one party has division, the other has the choice.)

*Cujus est solum ejus est usque ad celum et ad inferos.*—*Cujus solum ejus est altum.* [He who owns the surface soil owns (prima facie) up to the sky above it and to the centre of earth beneath it. Under the former would be included buildings; under the latter, minerals.]

**Culpa** (Roman law), fault, neglect. *Culpa levis*, slight or pusile neglect; *culpa lata* or *magna*, gross neglect, also *culpa crassa negligentia*.

*Culpa lata dolo equiparatur.*—(Gross negligence is held equivalent to intentional wrong.)

*Cum duo inter se pugnantia reperiuntur in testamento ultimum cum est.*—(Where two things repugnant to each other are found in a will, the last prevails.)

**Cum grano salis** (*with a grain of salt*), with allowance for exaggeration.

**Cum testamento annexo** (*with the will annexed*). When the testator has neglected to appoint an executor, or if, having done so, no executor is prepared to act, administration *cum testamento annexo* is granted.

**Cumulative**, additional, as distinct from substitutional or alternative, e.g., legacies, sentences, remedies.

**Curate**, one who has the cure of souls, the lowest ecclesiastic

tical degree. He may be (*a*) *temporary*, or *stipendiary*, or (*b*) *perpetual*, in which case he resembles a vicar.

**Curator**, a guardian. He may be (*a*) of a minor; (*b*) of a person *non compos mentis*; (*c*) of property *ad interim*, called *curator bonis*; (*d*) for the purpose of conducting a suit for a minor, called *curator ad litem*. See *Tutor*.

**Curia advisari vult** (*the court desires to consider* [before delivering judgment]). Abbreviated in our reports thus, *cur. adv. vult.*, or *c. a. v.*

**Curia claudenda**, an old writ to compel the defendant to erect a wall between his land and the plaintiff's.

**Curia cursus aquæ**, a court held by the lord of the manor of Gravesend for management of the river traffic.

**Curia penticiarum**, a court held by the sheriff of Chester in a place called the *Pentice* (pent-house).

**Curiality**, the privileges and prerogatives of a court.

**Cursitors**, clerks of the Court of Chancery, who drew up writs that were "of course" (*de cursu*).

**Courtesy of England** (*Curialitas*, Sc.), the estate which a husband has for his life in his wife's fee-simple or fee-tail estates, general or special, after her death. Three things are necessary to this estate, a legal marriage, seisin of the wife, and birth of issue, capable of inheriting, alive and during the mother's life. See *Cæsariun*.

**Curtilage**, a yard, piece of ground, or garden which adjoins a dwelling-house.

**Custode amovendo**, an old writ to remove a guardian.

**Custodia legis** (*in the custody of the law*). See *In custodia*.

**Custodiam lease**, a grant from the Crown under the Exchequer seal, by which lands, etc., of the king were demised or committed to some person as custodee or lessee thereof.

**Custody**, in criminal law, detention. (2) See *Infant*.

**Custom**, unwritten law established by long usage. It may be (*a*) *general*, which is the common law; or (*b*) *particular* or local, which is custom proper; (*c*) personal, e.g., the custom of merchants, or "law-merchant," as distinguished from "customs of trade," which apply only to one particular trade. Customs must be immemorial, continuous, peaceable, reasonable, certain, i.e., definite, compulsory, i.e., not optional, and consistent.

the other p<sup>r</sup> house, the office where goods are entered for

**Customary Court**, a court which should be kept within the manor for which it is held, for the benefit of the copy-holders of the manor (*q. v.*).

**Customary Freehold**, is one held by privilege of *frank tenure*, i.e., by custom and not by the will of the lord, wherein it differs from copyholds. Otherwise it resembles them.

**Customs**, duties levied on commodities imported or exported.

**Custos rotulorum** (*the keeper of the rolls or records*), the principal justice of the peace within the county.

**Cy-près**, a doctrine of the Courts, whereby if a person expresses a general intention with regard to his property, and also directs a particular mode of carrying out the same which is contrary to law, they in some cases give effect to his general intention *as near as possible*; e.g., in the case of charitable legacies.

## D

**D. P., Dom. Proc.** (*Domus Procerum*), the House of Lords.

**Damage**, a wrongful act for which the person injured is entitled to compensation. It may be (*a*) *actual* or *special*; (*b*) *consequential*.

**Damage-feasant**, or *faisant* (*doing damage*). See *Distress*.

**Damages**, the compensation for *damage* (*q. v.*). *Liquidated damages* are those which are settled, as to amount, beforehand between the parties, e.g., for breach of a contract. Damages may be *nominal*, *substantial*, or *aggravated*. The *measure of damages* is the test by which the amount is fixed. *Damages ultra*, additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

**Dame**, the legal title of the wife of a knight or baronet.

**Damify**, to damage, to injure, to cause loss to any person.

**Damnosa hæreditas** (Roman law), a disadvantageous, or unprofitable inheritance.

**Damnum absque injuriâ** (*loss or damage caused by an act which is not wrongful*). This is not actionable.

**Damnum fatale**, fatal damage, for which bailees are not liable.

**Darraign**, to clear a legal account, to answer an accusation, to settle a controversy.

**Darrein**, last. See *Assize, Puis darrein*.

**Date**. See *Deed*.

**Dative**, or **Datif**, that which may be disposed of at will.  
*Datirus tutor* (Roman law), one appointed by will or by a magistrate.

**Datum, Data**, facts or principles given or allowed.

**Day**. The law, as a rule, takes no account of fractions of a day, except in cases of registration, where priority decides rights. *Day to shew cause*, an infant defendant against whom a decree is made is generally given a day after attaining majority to show cause against it. *Days of Grace*, see *Grace*. *Day-rule*, or *day-writ*, permission formerly granted to a prisoner to go out of prison to transact his business.

**Daysman**, an arbitrator, an elected judge.

**De (concerning)**. For the various writs beginning with this title see the second word of the title of the writ, e.g., *Bonis, Contumace*, etc.

**De bene esse**, to allow a thing to be done provisionally and out of due course, e.g., evidence to be taken. See R. S. C. 1883, Ord. XXXVII., r. 5.

**De bonis non**. See *Administration*.

**De die in diem**, from day to day, continuously.

**De Donis, Statute of**. See *Donis, Tail*.

**De facto, de jure**, in fact, by right. These are mutually opposed terms.

**De la plus belle**. See *Dower*.

**De medietate linguae**. See *Jury*.

*De minimis non curat lex*.—(The law takes no account of trifles)

*De non apparentibus, et de non existentibus, eadem est ratio*.—(As to things not apparent and things non-existent the conclusion is the same.)

**De novo**, anew, afresh.

**De son tort, Executor**, one who not being appointed an executor takes upon himself to act in that capacity at his own risk (lit. *of his own wrong*).

**Dead freight**, money paid by a person who has chartered a ship and only partly loaded her, in respect of the part left empty.

**Dead man's part**, that part of an intestate's personality which, prior to 1 Jac. II., c. 17, was not divided between his wife and children.

**Death**, may be *natural* or *civil*. When a person has not been heard of for seven years he is presumed to be dead. As to Scotland, see 54 & 55 Vict. c. 29. There is not in English law any presumption as to which died first of two persons killed by the same accident, *e.g.*, by a shipwreck.

**Deathbed declarations**, see *Dying*. (2) Law of death-bed (Sc.). See *Liege Poustie*.

**Debenture**, an instrument under seal issued by a company or public body as security for a loan. It is usually for a fixed sum and time, which, being inconvenient to lenders, was the cause of the creation of *Debenture Stock*, which is frequently irredeemable, and is transferable in any amount. *Mortgage debentures*, under the Acts of 1865 and 1870, are a means of raising money on securities in the hands of the borrowers.

**Debet et detinet, Action in the**, was one brought by the original creditor against the original debtor. One by a person representing a creditor, *e.g.*, an executor was in *detinet* only.

**Debita sequuntur personam debitoris**.—(Debts follow the person of the debtor.)

**Debitor non presumitur donare**.—(A debtor is not presumed to give.) See *Delicatus*.

**Debitum fundi** (Sc.), a real debt, or charge on land.

**Debt**, a sum certain due from one person (the *debtor*) to another (the *creditor*). Debts are (1) of *record*, (2) *specialty*, and (3) *simple contract*; (1) being those proved by the records of a court, *e.g.*, judgment debts, (2) those under seal, (3) those not under seal. Debts are paid in the following order in the course of administration (*q. v.*): (a) Crown debts, (b) Judgment debts, (c) Recognisances and statutes, (d) Special and simple contract debts, (e) Voluntary bonds and covenants.

**Debtee-Executor**, where a person indebted to another makes his creditor or debtee his executor.

**Debtor's summons**, a notice to pay under seal of the Court of Bankruptcy, non-compliance with which within the time named is an *act of bankruptcy*. By the Bankruptcy Act, 1883, a bankruptcy notice under the Act is substituted for a debtor's summons (s. 4 (g)), and judgment debtors' summonses are made part of the business in bankruptcy (s. 103). See *Bankrupt*.

**Decedent**, a deceased person.

**Deceit, Action for**, a common law action to recover

damages for loss caused by misrepresentation or fraud. See those titles.

**Decern** (Sc.), to decree.

**Declarant**, a person who makes a declaration.

**Declaration**, a proclamation, (2) An affirmation (*q. v.*), permitted by 5 & 6 Wm. IV. c. 62, instead of an oath in certain cases, (3) A statement by a plaintiff of his cause of action. See *Statement of Claim*.

**Declaration of Titles Act, 1862**, one under which any one entitled to an estate in fee simple in possession in land may apply by petition in the Chancery Division for a declaration that he has a good title.

**Declaration of trust**. All declarations or creations of uses or trusts of any lands, tenements, or hereditaments must be proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing.

**Declarator** (Sc.), an action whereby it is sought to have some right judicially ascertained and declared.

**Declaratory decree**, one declaring the rights of the parties without ordering anything to be done.

**Declaratory statutes**, those which declare the existing law.

**Declaratory Plea**, a plea of sanctuary or of benefit of clergy. Abolished in 1826. See *Plea*.

**Decree**, the order or judgment of a court pronounced on the hearing of an action. A *decree nisi* is first pronounced in matrimonial causes, and is made *absolute* after an interval if the other party does not in the meantime show good cause to the contrary. Such are decrees for dissolution or nullity of marriage.

**Decreet** (Sc.), decree.

**Decreet arbitral** (Sc.), the award of an arbitrator.

**Decretal order**, a Chancery order in the nature of a decree, but not made at the hearing.

**Decretals**, a volume of the canon law, so called as containing the decrees of sundry Popes. (2) A digest of the canons.

**Dedicate**, to make a private way public, by acts evincing an intention to do so.

**Dedi et concessi** (*I have given and granted*), the operative words formerly used in grants, etc.

**Dedimus potestatem** (*we have given the power*), a writ or commission empowering the persons to whom it is directed

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to do a certain act, such as administering the oath to a newly appointed justice, or, formerly, appointing an attorney.

**Deditio**, the act of yielding up anything; surrendry.

**Deed**, an instrument written on paper or parchment duly signed, sealed, and delivered. A *deed poll* (polled means cut even) is one to which there is only one *part*, i.e., the party or parties to it is or are in the same interest. As to a *deed indented* see *Indenture*. A deed is necessary to almost all dealings with real property. It imports a *consideration* (*q. v.*). For the different parts of a deed, see *Premises*, *Recital*, *Tes-tatum*, *Habendum*, *Tenendum*, *Reddendum*, *Covenant*. A deed should bear the date of its execution, but this is not essential if the date can be otherwise proved. See also *Composition*, *Acknowledgment*, *Delivery*.

**Deed of covenant**. Covenants are frequently entered into by a separate deed so called, with the object of keeping them off the title of an estate, or where the person entitled to the benefit of the covenant is not also the owner of the estate; e.g., covenants for production of title deeds; or, again, where a covenant with a penalty is substituted for a bond.

**Deemster**. See *Dempster*.

**Defamation**, scandalous words spoken concerning another, tending to the injury of his reputation, for which an action on the case for damages would lie.

**Default**, omission of that which a man ought to do; e.g., of *appearance* or of *pleading* (*q. v.*). See *Wilful*.

**Default summons**, a procedure for the summary recovery of a debt. See 51 & 52 Vict. c. 43, s. 86.

**Defeasance**, a condition, especially one contained in a collateral deed or document accompanying another, providing that upon the performance or occurrence of certain matters, an estate of interest created by such other deed shall be defeated and determined. It is of three kinds; as applicable (1) to freeholds, (2) chattels, (3) bonds, recognisances, and warrants of attorney.

**Defeasible**, that which may be defeated, determined, or divested.

**Defectus sanguinis**, failure of issue. (2) See *Challenge*.

**Defence**, in pleading, is (a) *peremptory*, i.e., a denial by the defendant of the truth or validity of the plaintiff's complaint; or (b) *dilatory*, i.e., one which raises a technical objection to the further prosecution of the action, but does

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himself or his tenants for years. See *Ancient demesne, Crown lands.*

**Demise**, a transfer of a right or dignity; e.g., *demise of the Crown*, which usually occurs on the death of the sovereign; hence the word "demise" is sometimes wrongly used for "decease." (2) Transfer or grant, especially by lease.

**Demise and redemise**, mutual leases or grants of the same land, or something out of it; e.g., a rent-charge.

**Demonstrative**, see *Legacy*.

**Dempster**, or **Deemster**, the Chief Judge of a Tinwald Court in the Isle of Man.

**Demur**, to stop, to make demurrer (*q. v.*). See *Parol*.

**Demurrable**, a pleading, etc., which fails to allege such facts as would support the claim made by it.

**Demurrage**, a term used in commercial navigation, signifying an allowance made to the owners of a ship by the freighter for detaining her in port longer than the period agreed upon for fitting out, loading, or unloading. (2) The detention itself.

**Demurrer**, a pleading which admits the facts as stated in the pleading of the opponent, and, referring the law arising thereon to the judgment of the Court, awaits until the Court decides whether the party demurring is bound to answer. Demurrers used to be general or special (*q. v.*); but the latter were abolished by the C. L. P. Act, 1852, and general demurrers by the R. S. C., 1883, Ord. XXV. Points of law are now to be raised on the pleadings; and if a pleading in the opinion of the Court arises no reasonable cause of action or answer, it may be struck out.

**Denizen**, an alien born, who has obtained from the Crown letters patent, called *letters of denization*, to make him (either permanently or for a time) an English subject. Since the Naturalization Act, 1870 (*q. v.*) denization has become rare.

**Denman's (Lord) Act**, 6 & 7 Vict. c. 85, makes admissible the evidence of a person previously held to be incapacitated by reason of crime or interest.

**Deodand**, a personal chattel which has been the immediate occasion of the death of any human being who had reached years of discretion. Previous to 1846 it was forfeited to the Crown, to be applied to charitable uses.

**Departure**, in pleading, is when a party deserts the ground that he took in his previous pleading and resorts to another. By the Judicature Act, 1875, Ord. XIX., r. 16, this may only be done by way of amendment.

**Depasture**, to put cattle out to graze.

**Deponent**, a person who makes an affidavit. (2) A witness.

**Deportation**, transportation.

**Depose**, to make a *deposition* or statement on oath. *Vide* R. S. C., 1883, Ord. XXXVII. rr. 1-5.

**Deposit**, money, deeds, etc., lodged by one person with another as a pledge or security, *e.g.*, that he will complete a purchase, or repay a loan. See *Equitable mortgage*.

**Deposition**, depriving a person of a dignity, used especially of ecclesiastical censure. (2) See *Depose*.

**Deprivation**, taking away a benefice from a clergyman on account of some offence.

**Deputy**, one who acts for or instead of another in some office or dignity. See *Delegatus*.

**Deputy Lieutenant**, the deputy of a lord lieutenant of a county. Each lord lieutenant has several deputies.

**Deraign**, to degrade. (2) To prove, make good.

**Derelict**, abandoned; especially used of a vessel forsaken at sea.

**Derelict lands**, those suddenly left by the sea, as when the sea shrinks back below the usual water-mark. See *Alluvion*.

*Derivativa potestas non potest esse major primitivæ*.—(The derivative power cannot be greater than the primitive.)

**Derivative conveyances**, secondary deeds, which presuppose and alter some other. (2) See *Settlement*.

**Derogate**, to lessen, impair. *A grantor may not derogate from his own grant*; *i.e.*, prejudice the right thereby created by any subsequent act of his own.

**Derogatory clause**, in a will, is one secretly inserted by the testator, with a condition that no will he may make thereafter shall be valid, unless this clause be inserted. Such a clause by English law is invalid, as tending to make the will irrevocable.

**Descent**, one of the two chief methods of acquiring an estate in lands. It is the passing of landed property of an intestate to another person by the operation of law, *i.e.*, by his right of representation as heir-at-law of the intestate. See *Heir*, *Per capita*, 3 & 4 Wm. IV. c. 106.

**Descent cast**, the devolving of realty upon the heir of a disseisor, etc., on the death of his ancestor intestate. Prior to 3 & 4 Wm. IV. c. 27, it "tolled," or took away, the real owner's right of entry.

**Desertion**, the criminal offence of abandoning (a) the army or navy without licence; (b) wife or children. (2) Under the matrimonial law, desertion for two years without cause is ground for a decree of judicial separation against either husband or wife. (3) *Desertion of the diet* (Sc.), see *Diet*.

**Designs**, by registering designs (ornamental or for manufacture), the exclusive use of them is secured for a certain time, varying with their nature.

**Destination** (Se.), the nomination of a succession of heirs to a property by the owner thereof.

**Detainer**, *unlawful*. The wrongful keeping of a person's goods, although the original taking may have been lawful. (2) *Writ of*, an obsolete form of process for commencing a personal action against one already in prison. (3) *Forcible*

**Determinable**, An estate is, when it may *determine*, or come to an end, before the time naturally limited for its expiration, on the happening of some contingency, e.g., a widow's life estate on her marrying again.

**Detinet**. See *Debet*.

**Detinue**, a personal action at law arising *ex delicto* for the recovery of goods or their value. No longer in use.

**Devastavit** (*he has wasted*), a devastation or waste of the property of a deceased person by an executor or administrator, by misapplication of the assets, for which he is liable.

**Devest**. See *Divest*.

**Deviation**, by a ship, is departure from her proper course. This invalidates her insurance policies. (2) By a railway, is an alteration of its direction; this is only allowed within certain fixed limits.

**Devisavit vel non**, an issue formerly sent from the Court of Chancery to be tried in a court of law, whether lands alleged to pass by a certain will did so pass or not.

**Devise**, a gift by will, properly applicable to realty; but it is also used sometimes of personality. See *Legacy*.

**Dictum**, or *Obiter dictum*, is the expression by a judge of an opinion on a point of law arising during the hearing of a case, which, however, is not necessary for the decision of that case. A dictum is not therefore binding on other judges.

**Diem clausit extremum** (*he has died*), a writ of extent directing the sheriff, on the death of a Crown debtor, to inquire by a jury when and where the Crown debtor died, and what chattels, debts, and lands he had at the time of his

decease, and to seize them into the Crown's hands. See *Extent*.

**Dies fasti, nefasti, et intercisi** (*business days, holidays, and half-holidays.* [Roman law.])

**Dies incepitus pro completo habetur.**—(A day begun is held as complete.)

**Dies non** (*Scil. juridicus*), one on which no legal business can be transacted ; *e.g.*, Sunday, Christmas day.

**Diet** (*Sc. day*), *Desertion of the Diet*, the abandonment of judicial proceedings on a particular indictment or *libel*. *Diets of compearance*, days on which a party is cited to appear ; (2) a deliberative assembly.

**Digamy**, second marriage after death of the first wife.

**Digest**, a compilation or distribution of a subject into various classes or departments ; particularly the Pandects of Justinian.

**Dignity**, the right to bear a title denoting rank or office. If inheritable it is a species of incorporeal hereditament.

**Dilapidation**, the ecclesiastical term for waste as applied to buildings of the benefice. See *Waste*. (2) Liability for disrepair by a tenant holding under an agreement to yield up in good repair.

**Dilatory pleas**, a class of defence at common law, now obsolete, founded on some matter of fact not connected with the merits of the case ; *viz.*, *pleas to the jurisdiction* ; *in suspension*, *i.e.*, for some temporary incapacity ; and *in abatement*, *i.e.*, showing some cause for quashing the declaration.

**Diligence**, care. See *Negligence*, *Culpa*, *Bailment*. (2) In Scotch law (*a*) a warrant to enforce attendance of witnesses or production of writings ; (*b*) a writ of execution.

**Diminution**, of the record, incompleteness.

**Diocese**, a district subject to a bishop's authority ; it is divided into archdeaconries, and has diocesan courts, otherwise called *consistorial*.

**Diploma**, a royal charter or letters patent.

**Direct evidence**, is opposed to circumstantial evidence.

**Direction**, the exposition of the rule of law given to a jury by the judge in a case where their verdict depends partly on the law. Erroneous or *mis-direction* is ground for a new trial.

**Director**, one appointed to manage or superintend the affairs of a company.

**Director of Public Prosecutions**. See *Public Prosecutor*.

**Directory statute**, is opposed (1) to *declaratory* (*i.e.*, a

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statute which merely declares what the law is), and (2) to *imperative*. When a statute directs that an act should be done in a specific manner, or authorizes it upon certain conditions, if a strict compliance with its provisions is not essential to the validity of the act, it is said to be *directory*, although the performance may be enforced by mandamus; but if such compliance is essential, it is said to be *imperative*.

**Diriment impediments**, absolute bars to marriage, which would make it null *ab initio*.

**Disability**, incapacity to do any legal act, e.g., to sue or contract. It may be (a) *absolute* or *perpetual*, as in the case of felons; or (b) *partial* or *personal*, as in the case of infants. See *Absence beyond seas*.

**Disabling statutes**, those which restrict the exercise of a right.

**Disafforest**, to throw open; to reduce from the privileges of a forest to the state of common ground.

**Disagreement**, the refusal by a grantee or donee to accept an estate or gift; whereby the grant, etc., is annulled.

**Disalt**, to disable a person.

**Disappropriation**. See *Appropriation*.

**Disbarring**, expelling a barrister from the bar for misconduct; a power vested in the benchers of each of the four Inns of Court, subject to an appeal to the judges.

**Discharge**, to release, to relieve of an obligation, to deprive of binding force. (2) A *bankrupt* (*q. v.*) under the Act of 1869 was discharged when he had either paid 10s. in the pound, or otherwise satisfied his creditors. Under the Act of 1883, he is not given his discharge except at the discretion of the Court, and it will be refused, or granted only for a time, or subject to conditions, if he has committed any misdemeanor under the Act, or under the Debtors Act, 1869, or done any of the acts specified in s. 28, showing reckless trading, or fraud, or been previously bankrupt. On payment of his debts in full the bankruptcy will be annulled (s. 35). After his discharge, any property he may acquire remains his, instead of belonging to his trustee. (3) A rule *nisi* is discharged when the Court decide that it shall not be made *absolute* (*q. v.*).

**Discharge of a jury**, takes place (1) either by the act of God, as the death of one of the jury; or (2) in due course on the termination of the trial by verdict (or sentence); or (3) by the judge determining that they are so divided as to be unable ever to agree, or that there is other sufficient cause.

**Disclaimer**, a formal renunciation, *e.g.*, by a trustee, of the trust (which is usually evidenced by a deed); or by a patentee, of part of his patent. (2) A refusal to accept, *e.g.*, an office, by an *executor* who declines to prove a will; or by a trustee in *bankruptcy*, in the case of onerous property of the bankrupt. (3) A denial by a tenant of his landlord's title. (4) In equity, prior to the Judicature Act, it was a renunciation by defendants of all claim to the thing demanded by the plaintiff.

**Discontinuance**, an interruption or breaking, scil. of the right of entry. This formerly happened where a person aliened a larger estate than he had, so that on his death the next owner had to bring an action. (2) *Of an action*, is governed by Ord. XXVI. of R. S. C., 1883. The plaintiff may afterwards bring another action for the same cause.

**Discovert**, a widow; a woman unmarried.

**Discovery**. It is the right, as a general rule, of a party to an action, to exact from any other party thereto discovery or information, upon oath, as to (*a*) matters of fact (see *Interrogatories*), and (*b*) documents in defendant's past or present possession or power. See *Production*, *Inspection*. The right of a plaintiff to this benefit as against a defendant is limited to a discovery of such material facts as relate to the "*plaintiff's case*," and does not extend to a discovery of the manner in which the "*defendant's case*" is to be exclusively established or to evidence which relates exclusively to his case.

**Discredit**, to throw doubt on a witness's evidence by assailing his character, or otherwise. A party may not, as a rule, discredit his own witness.

**Discretion**, the use of private and independent judgment. Costs are in the discretion of the judge of first instance, and his decision is therefore not interfered with by the Court of Appeal.

**Discussion** (Sc.), the sureties' right to defer paying the debt for which they became bound until the creditor has *discussed* (*i.e.*, brought process of execution against) the principal debtor, and he has failed to pay.

**Disentailing deed**, an enrolled assurance barring an entail, *i.e.*, converting it into an estate in fee. See *Protector*, *Base fee*; 3 & 4 Wm. IV. c. 74.

**Disfranchisement**, the act of depriving of a franchise (*q. v.*).

**Disgavel**, to exempt from the rules of *gavelkind* (*q. v.*).

**Disherison**, the act of debarring from inheritance.